

***United States Court of Appeals
for the Second Circuit***

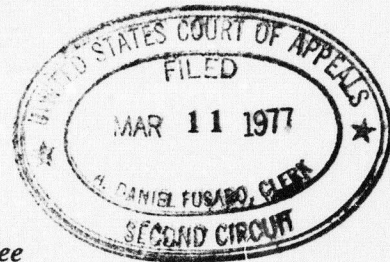


JOINT APPENDIX

77-7100

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 77-7100



DRYS SHIPPING CORPORATION,
Plaintiff-Appellee
against

FREIGHTS, SUB-FREIGHTS, CHARTER
HIRE AND/OR SUB-CHARTER HIRE OF
THE M.S. DRYs,

and

A/S FALKEFJELL AND A/S DOVREFJELL,
Defendants-Appellants,

and

ATLANTIC AND GREAT LAKES STEAMSHIP
CORPORATION,
Garnishee-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

HAIGHT, GARDNER, POOR & HAVENS
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New York, New York 10004

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New York, New York 10005

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES
Drys Shipping Corp. vs. Freights, Subfreights, etc.
of the M.S. Drys.

<u>Date</u>	<u>Nr.</u>	<u>Proceedings</u>
01-06-77	1	Filed complaint—issued summons
01-07-77	—	issued process of Maritime Attachment and Garnishment (4) for subfreights, goods, chattels, etc.
01-07-77	—	issued Warrent for arrest <i>in Rem</i>
01-07-77	—	issued show cause summons—ret. 01-31-77 at 10 AM in Rm 2703
01-06-77	2	Fld Pltffs affid in support of applications for process to attach the deft's goods & chattels
01-10-77	3	Filed defts affdvt. and ORDER TO SHOW CAUSE for an order vacating attachment (maritime lien)—ret. 01-10-77 at 12 noon—Goettel, J.
01-10-77	4	Filed defts memorandum in support of #3.
01-12-77	5	Filed defts supplemental affdvt. re #3.
01-07-77	6	Filed ANSWER of <i>GARNISHEE</i> Atlantic & Great Lakes SS Corp. <i>DMW&K</i>
01-19-77	7	Filed warrent for arrest in action in rem with marshals return served—Atlantic & Great Lakes Steamship Corp. by Kevin J. Kerwin on 1-10-77
01-19-77	8	Filed process of maritime attachment and garnishment with marshal ret. served—M. & T. Bank by Donald Davis on 1-7-77
01-19-77	9	Filed process of maritime attachment and garnishment with marshal ret. served—Atlantic & Great Lakes Steamship Corp. on 1-10-77
01-25-77	10	Filed process of maritime attachment and garnishment with marshal ret. served—Citibank, N.A. by Amanda I. Mackin on 1/7/77
01-25-77	11	Filed summons to show cause why Intangible Property should not be paid into court with marshal ret. of service served—Atlantic & Great Lakes Steamship Corp. on 1/10/77

<u>Date</u>	<u>Nr.</u>	<u>Proceedings</u>
01-25-77	12	Filed process of maritime attachment and garnishment with marshal ret.—served First Empire Bank, New York on 1-7-77
01-26-77	13	Filed letter addressed to Sarah C. Sawyer in re. to releasing the balance in the A/S Olsen and Ugelstad's account dated 1-19-77
02-15-77	14	Filed OPINION #45602 Defts moved to vacate attachment by OSC. It follows that if the issue is not susceptible of resolution on a summary judgment motion, it cannot be evaluated on a motion to vacate the attachment and dismiss the motion is denied subject to renewal upon affdvt. setting forth the unquestioned contractual intent of the parties in the memorandum of agreement dated 7-2-76 or witnesses to testify as to the contractual intent—Goettel, J. m/n
02-14-77	15	Filed Letter of D. J. Harper in re to order of attachment and their accounts dated 2-1-77
02-18-77	16	Filed defts affdvt. in support of their motion to vacate the attachment
02-18-77	17	Filed defts reply to pltf's memorandum in opposition to motion to vacate arrest and attachment
02-18-77	18	Filed deft memorandum of law on behalf of Atlantic and Great Lakes Steamship Corp., as Garnishee
02-18-77	19	Filed pltf affdvt. in opposition to defts motion to vacate arrest and attachment
02-18-77	20	Filed pltf's memorandum in opposition to motion to vacate arrest and attachment
02-18-77	21	Filed pltf's supplemental affdvt. in opposition to defts motion to vacate arrest and attachment
02-18-77	22	Filed defts supplemental memorandum of law
03-01-77	23	Filed defts notice of appeal to the USCA for the Second Circuit from the order dated 2015077. mailed copy to Kirlin, Campbell & Keating and Donovan, Maloof Walsh & Kennedy
03-03-77	24	Filed Letter dated 2-2-77 and Letter dated 2-4-77 by atty's for defts

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1-12-77

la

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

COMPLAINT IN ADMIRALTY

Plaintiff, by its attorneys, Kirlin, Campbell & Keating,
for its Complaint herein, alleges on information and belief,
as follows:

FIRST CLAIM FOR RELIEF

FIRST: This is a case of admiralty and maritime
jurisdiction within the meaning of Rule 9(h) of the Federal Rules
of Civil Procedure and within the admiralty and maritime
jurisdiction of the United States and of this Honorable Court.

SECOND: At all material times, Plaintiff was and is
a corporation organized and existing under and by virtue of the
laws of a sovereign nation other than the United States of
America with an office and place of business in Piraeus, Greece
and owned and operated the M.S. DRYs (hereinafter called the
"Vessel").

THIRD: On information and belief the Freights, Sub-
Freights, Charter Hire and/or Sub-Charter Hire of the Vessel
are now, or during the pendency of this action will be, within
this District Court and within the jurisdiction of this Honorable
Court.

FOURTH: At all material times, Defendants A/S Falkefjell and A/S Dovrefjell were and are corporations or other business entities organized and existing under and by virtue of the laws of a sovereign nation other than the United States of America with offices and places of business in Oslo, Norway.

FIFTH: On or about August 22, 1972 Plaintiff, as owner of the Vessel, and Defendants, as charterers, entered into a contract of time charter party (hereinafter called the "Charter") in writing, a copy of which will be produced at the trial. The Charter provided that Plaintiff was to let and Defendants were to hire M.S. DRYS for a term of five years, forty five days more or less in Defendants' option, for worldwide trading.

SIXTH: Clause 8 of the Charter provided, in pertinent part, as follows:

"8. *** Charterers are to load, stow, trim and discharge the cargo at their expense under the supervision of the Captain ***"

Clause 18 of the Charter provided, in pertinent part, as follows:

"18. That the Owners shall have a lien upon all cargoes and all sub-freights for any amounts due under this Charter, including General Average contributions ***"

SEVENTH: On or about April 8, 1973 the Vessel duly entered on the performance of the Charter and thereafter, pursuant to the terms of the Charter, carried various cargoes for Defendants' account and pursuant to Defendants' orders and is still performing pursuant to the Charter.

EIGHTH: On various occasions while the Vessel was performing pursuant to the Charter and Defendants' orders, Defendants and their servants and others for whom Defendants are responsible wrongfully and negligently caused physical damage

and injury to the cargo holds of the Vessel in the course of loading and discharging cargoes which were carried by the Vessel, all in breach of Defendants' obligations under the Charter.

NINTH: As a result of the wrongful and negligent damage and injury to the Vessel, Plaintiff has sustained loss of hire and damages in the amount of \$798,686.75, as nearly as can be estimated at present, which is due from Defendants to Plaintiff pursuant to the terms of the Charter, no part of which has been paid to Plaintiff by Defendants, although duly demanded.

TENTH: Plaintiff and its servants, the master and officers of the Vessel have duly performed all the terms and conditions of the Charter on their part to be performed.

ELEVENTH: On or about December 20, 1976 Defendants, by their managing agents A/S Olsen & Ugelstad of Oslo, Norway, sub-chartered the Vessel to Atlantic & Great Lakes Steamship Corporation of New York ("Atlantic & Great Lakes") for a time charter trip from the U.S. Gulf and Jamaica to the United Kingdom or the Bordeaux-Hamburg range pursuant to the terms and conditions of a written contract of sub-time charter party (the "Sub Charter").

TWELFTH: The Vessel has commenced performance of the Sub Charter and freights, sub-freights, charter hire and/or sub-charter hire are currently due and payable by Atlantic & Great Lakes to Defendants or to A/S Olsen & Ugelstad as managing agents for Defendants pursuant to the terms of the Sub Charter.

THIRTEENTH: Plaintiff duly notified Atlantic & Great Lakes on January 5, 1977 that it was exercising its lien on freights, sub-freights, charter hire and/or sub charter hire under Clause 18 of the Charter for amounts due Plaintiff under the Charter.

FOURTEENTH: By reason of the premises Plaintiff demands that the freights, sub-freights, charter hire and/or sub-charter hire due from Atlantic & Great Lakes to Defendants or to Defendants' managing agents, A/S Olsen & Ugelstad, up to and

4a

and including \$798,686.75 be proceeded against by this Court in
rem for the benefit of Plaintiff.

SECOND CLAIM FOR RELIEF

FIFTEENTH: Plaintiff repeats and realleges each and every allegation contained in paragraphs First through Twelfth of this Complaint with the same force and effect as if again fully set forth herein.

SIXTEENTH: By reason of the premises Plaintiff has been damaged in the sum of \$798,686.75, together with interest, as nearly as the same can now be estimated, no part of which has been paid, although duly demanded. Plaintiff reserves the right to amend this Complaint as and when more information becomes available.

WHEREFORE Plaintiff prays that:

1. A warrant for the arrest of the freights, sub-freights, charter hire and/or subcharter hire of M.S. DRYs in the hands of Atlantic & Great Lakes Steamship Corporation, 76 Beaver Street, New York, New York may issue pursuant to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims, F.R.C.P. and that a summons to show cause issue thereon.

2. Process for Maritime Attachment and Garnishment providing for the attachment of goods, chattels, credits or effects of the Defendants may issue pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims, F.R.C.P. in the amount of \$798,686.75, the sum sued for with interest, costs and disbursements, if Defendants cannot be found within the District, to wit: all funds, debts, credits, effects and choses in action in the hands of

- (a) Citibank, N.A., 399 Park Avenue, New York, account of Fjell Navigation Inc.
- (b) First Empire Bank, New York, 654 Madison Avenue, New York, New York 10022, account of A/S Olsen & Ugelstad No.130-8509.
- (c) M. & T. Bank, 654 Madison Avenue, New York, New York, account of A/S Olsen & Ugelstad.
- (d) Atlantic & Great Lakes Steamship Corp., 76 Beaver Street, New York, New York for account of A/S Olsen & Ugelstad.

3. Judgment be entered in favor of Plaintiff against the Freights, Sub-Freights, Charter Hire and/or Sub Charter Hire of the M.S. DRYS in rem and against Defendants A/S Falkefjell and A/S Dovrefjell for the amount sued for, together with interest, costs and disbursements.

4. Plaintiff have such other, further and different relief as may be just and proper.

Dated: New York, New York

January 6, 1977

KIRLIN, CAMPBELL & KEATING
Attorneys for Plaintiff

BY: David H. Keating
A Member of the Firm
Office & P. O. Address
120 Broadway
New York, New York 10005
(212) 732-5520

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID A. NOURSE, being duly sworn, deposes and says:

I am an attorney of law and a member of the firm of Kirlin, Campbell & Keating, attorneys for the Plaintiff.

I have read the foregoing Complaint and know the contents thereof and the same is true to the best of my knowledge, information and belief.

The reason that this verification is made by me and not by the Plaintiff is that the Plaintiff is a foreign corporation and is not within this District.

David A. Nourse
DAVID A. NOURSE

Sworn to before me this
6th day of January 1977.

5/5
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1-12-77
RE
MP

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID A. NOURSE being duly sworn, deposes and says:

I am a member of the firm of Kirlin, Campbell & Keating,
attorneys for plaintiff Drys Shipping Corporation, and I make
this affidavit in support of plaintiff's application for process
to attach the defendants' goods and chattels, or credits and
effects in the hands of garnishees named in the complaint
pursuant to Supplemental Rule B, FRCP.

To the best of my information and belief, the defendants
A/S Falkefjell and A/S Dovrefjell cannot be found within the
District.

David A. Nourse

Sworn to before me this
day of January 1977

Notary Public

77 CIV 73 - GLG

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the MARSHAL of the SOUTHERN DISTRICT OF NEW YORK GREETING

WHEREAS, a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January, 1977, by

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of
the M.S. DEYS

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

in a certain action for loss of hire and damages for breach of charter therein alleged to be due and owing the said Plaintiff amounting to \$ 798,686.75 and praying for process of maritime attachment and garnishment against the said Defendant, and

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer, together with answers to any interrogatories served with the complaint, within 20 days after service of process upon him and requires that defendant shall serve his answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee

NOW, THEREFORE, we do hereby command you that if the said Defendants cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach credits and effects to the amount sued for, in the hands of:

Atlantic & Great Lakes Steamship Corp.

76 Beaver Street

New York, New York

Account of A/S Olsen & Ugelstad

to wit:

all funds, debts, credits, effects and choses in action of

A/S Falkefjell and A/S Dovrefjell

and that you promptly after execution of this process file the same in this Court with your return thereon.

WITNESS, the HONORABLE David H. Edelstathief Judge of said Court, this 7th day of January, 1977, and of our Independence the ~~one hundred and seventh~~ two hundred and first year

RAYMOND F. BURGHAULT

Clerk

Attorney for Plaintiff
Kirlin, Campbell & Keating
120 Broadway
New York, New York 10005

By

Deputy Clerk

Note: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

77 CIV 73 GLG

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the MARSHAL of the SOUTHERN DISTRICT OF NEW YORK GREETING

WHEREAS, a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January, 1977, by

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter Hire and/or Sub-Charter Hire of the M.S. DRYS

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

in a certain action for loss of hire and damages for breach of charter therein alleged to be due and owing the said Plaintiff amounting to \$ 798,686.75 and praying for process of maritime attachment and garnishment against the said Defendant, and

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer, together with answers to any interrogatories served with the complaint, within 20 days after service of process upon him and requires that defendant shall serve his answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee

NOW, THEREFORE, we do hereby demand you that if the said Defendants cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach credits and effects to the amount sued for, in the hands of:

M. & T. Bank
654 Madison Avenue
New York, New York

Account of A/S Olsen & Ugelstad

to wit:

all funds, debts, credits, effects and choses in action of A/S Falkefjell and A/S Dovrefjell

and that you promptly after execution of this process file the same in this Court with your return thereon.

WITNESS, the HONORABLE David M. Edelstein, Chief Judge of said Court, this 7th day of January, 1977, and of our Independence the one hundred and ~~seventy-seventh~~ two hundred and first year.

RAYMOND T. BURCHARDT
Clerk

Attorney for Plaintiff
Kirlin, Campbell & Keating
120 Broadway
New York, New York 10005

By _____
Deputy Clerk

Note: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

77 CIV 73 GLS

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the MARSHAL of the SOUTHERN DISTRICT OF NEW YORK GREETING

WHEREAS, a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January, 19 77, by

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

in a certain action for loss of hire and damages for breach of charter therein alleged to be due and owing the said Plaintiff amounting to \$798,686.75 and praying for process of maritime attachment and garnishment against the said Defendant, and

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer, together with answer to any interrogatories served with the complaint, within 20 days after service of process upon him and requires that defendant shall serve his answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee

NOW, THEREFORE, we do hereby command you that if the said Defendants cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach credits and effects to the amount sued for, in the hands of:

Citibank, N.A.

399 Park Avenue

New York, New York

Account of Fjell Navigation Inc.

to wit:

all funds, debts, credits, effects and choses in action of

A/S Falkefjell and A/S Dovrefjell

and that you promptly after execution of this process file the same in this Court with your return thereon.

WITNESS, the HONORABLE Will H. Belloc Chief Judge of said Court, this 7th day of January, 1977, and of our Independence the ~~one hundred and thirty-seventh~~ one hundred and thirty-seventh day of ~~July~~ July.

WILLIAM H. BELLOC

Clerk

Attorney for Plaintiff

Kirlin, Campbell & Keating

120 Broadway

New York, New York 10005 (212) 732-5520

By

Deputy Clerk

Note: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

BEST COPY AVAILABLE

PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

THE PRESIDENT OF THE UNITED STATES OF AMERICA

77 CIV 73 GLS

To the MARSHAL of the SOUTHERN DISTRICT OF NEW YORK GREETING

WHEREAS, a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January, 1977, by

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter Hire and/or Sub-Charter Hire of the M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

in a certain action for loss of hire and damages for breach of charter therein alleged to be due and owing the said Plaintiff amounting to \$798,686.75 and praying for process of maritime attachment and garnishment against the said Defendant, and

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer, together with answers to any interrogatories served with the complaint, within 20 days after service of process upon him and requires that defendant shall serve his answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee

NOW, THEREFORE, we do hereby command you that if the said Defendants cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach credits and effects to the amount sued for, in the hands of:

First Empire Bank, New York
654 Madison Avenue
New York, New York

Account of A/S Olsen & Ugelstad No. 130-8509

to wit:

all funds, debts, credits, effects and choses in action of

A/S Falkefjell and A/S Dovrefjell

and that you promptly after execution of this process file the same in this Court with your return thereon.

WITNESS, the HONORABLE David N. Edolatsin, Chief Judge of said Court, this 7th day of January, 1977, and of our Independence the ~~two hundred and first~~ two hundred and first year

RAYMOND F. EUGENIUS

Clerk

Attorney for Plaintiff
Kirlin, Campbell & Keating
One Twenty Broadway
New York, New York 10005

By

Deputy Clerk

Noted: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

SUMMONS TO SHOW CAUSE WHY INTANGIBLE PROPERTY SHOULD
NOT BE PAID INTO COURT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

77 CIV 73 GLC

-----X
DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYS

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

-----X
TO: ATLANTIC & GREAT LAKES STEAMSHIP CORPORATION

and To all persons having control of the freight, sub-freights,
charter hire and/or sub-charter hire of the M.S. DRYS

, or control of the proceeds of the sale of said
vessel or control of the proceeds of the sale of any property appurtenant
thereto or control of any other intangible property appurtenant thereto

You are hereby summoned to show cause before this Court in
Room 2703 of the Court House thereof, Foley Square, Borough of
Manhattan, City of New York, before Judge G.L. Goettl
on the 31 day of January, 1977 at 10 AM o'clock
why said property under your control should not be paid into court to
abide the judgment.

The service of this summons upon you brings said property
within the control of the court.

Service of this summons is ineffective unless made in time
to give notice of the required appearance of ten days or such shorter
period as the court may fix by making and signing the form of order
provided below.

RATMOND T. BURCHARDT

Clerk

Date: New York, NY 01-07-77

by

H. Swartz
Deputy Clerk

Good cause for shortening the ten day period prescribed by
Rule 2 of this Court for Admiralty and Maritime Claims having been
shown by the annexed affidavit of _____ verified
, the period of notice of the appearance
required by the foregoing summons is hereby fixed as _____ days.

Date: _____

U.S.D.J.

NOTE: This summons is issued pursuant to Rule C(1) of the Supplemental
Rules for Certain Admiralty and Maritime Claims of the Federal
Rules of Civil Procedure.

UNITED STATES OF AMERICA)
SOUTHERN DISTRICT OF NEW YORK) ss.

77 CIV 73 GLS

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Marshal of the Southern District of New York - GREETING:

WHEREAS a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January in the year of our Lord one thousand nine hundred and seventy seven by

DRYS SHIPPING CORPORATION,

against

Plaintiff,

Freights, Sub-Freights, Charter Hire and/or
Sub-Charter Hire of the M.S. DRYS

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendant,

upon an admiralty and maritime claim for \$798,686.75

for the reasons and causes in said complaint mentioned and praying for process of warrant for the arrest of said vessel and other property and that all persons interested in the said vessel and other property may be cited in general and special to answer the premises; and all proceedings being had, that the said vessel and other property may for the causes in the same complaint mentioned be condemned and sold to pay the demands of the plaintiff,

You are therefore hereby commanded to attach the said vessel and other property and to detain the same in your custody until the further order of the Court respecting the same and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of said complaint, that they must file their claims with the clerk of this Court within 10 days after the execution of this process or within such additional time as may be allowed by the Court, and must serve their answers within 20 days after the filing of their claims, and that you promptly after execution of this process file the same in this Court with your return thereon.

David H. Delstein

Chief Judge

of said Court, this 7th day of January, 1977, in the year of our Lord one thousand nine hundred and seventy seven, and of our Independence the one hundred and first year.

RAYMOND F. BURGHARDT

Kirlin, Campbell & Keating
120 Broadway
New York, New York 10005
(212) 732-5520

Attorney for Plaintiff

Clerk

By: _____

Deputy Clerk

NOTE: Claimant is required to file claim in the Clerk's office and to answer or except to said complaint within the times above fixed; otherwise the Plaintiff may enter an Interlocutory or Final Judgment as may be proper.

This Warrant is issued pursuant to Rule C(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DRYS SHIPPING CORPORATION,

Plaintiff,

-against-

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of
the M.S. DRYs,

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants

and

ATLANTIC AND GREAT LAKES STEAMSHIP
CORPORATION, . .

Garnishee.

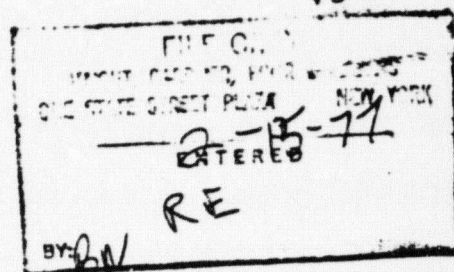
-----X
A P P E A R A N C E S :

KIRLIN CAMPBELL & KEATING, ESQS.
Attorneys for Plaintiff
120 Broadway
New York, N.Y. 10005

By: David A. Nourse, Esq.
Of Counsel

HAIGHT, GARDNER, POOR & HAVENS, ESQS.
Attorneys for Defendants (Charterers)
One State Street Plaza
New York, N.Y. 10004

By: Donald J. Kennedy, Esq.
Of Counsel



77 Civ. 0073 (GLG)

* 45602
O P I N I O N .

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
FEB 20 1977

GOETTEL, D. J.

Defendants move, by order to show cause, to vacate plaintiff's attachment of certain sub-freights and charter hire due defendants on a sub-charter of plaintiff's vessel.

Plaintiff, the Liberian ship owner of the Greek motorship Drys, and defendants, as charterers, entered into a five year time charter party in Oslo, Norway, (where defendants did business), on August 22, 1972. The charter terms included a clause mandating arbitration of all disputes in ^{1/} London, and a clause granting owners a lien on sub-freights and cargoes for any charter monies due but not paid. ^{2/} During

1/ Clause 17 provides:

"That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons in London, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men."

2/ Clause 18, in pertinent part, provides:

"That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Average contributors, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once"

DONOVAN, MALOOF, WALSH & KENNEDY, ESQS.
Attorneys for Garnishee
161 William Street
New York, N.Y. 10038
By: Richard E. Repetto, Esq.
Of Counsel

the course of the charter the cargo spaces of the ship were severely damaged, according to the plaintiff, by "stevedores and others for whom Defendants were responsible." (Plaintiff's Opposing Memorandum at 4.) The condition of the ship precluded further carriage of certain bulk cargo.

Since there was disagreement as to who was responsible for the damage to the vessel, the parties entered into a supplemental agreement on July 2, 1976, allowing for the repair of the cargo spaces in conjunction with the routine dry-docking for repairs then coming due. This supplemental agreement provided that any time or cost in excess of that consumed by routine repairs would be chargeable to the Charterers rather than to the Owners. Under the agreement, the determinations as to time and cost divisions were to be made by independent parties and the parties declared their "irrevocable intention" to proceed with arbitration of all disputes under the agreement.

At the time the supplemental agreement was made, the parties were already involved in arbitration under the charter concerning a prior dispute. The surveyors of the damages under the supplemental agreement failed to reach an accord as to

responsibility for the damages and plaintiff, seeking recompense for lost hire (during repairs) and the cost of repairs, in the total amount of \$798,686.75, brought an action under F. R. Civ. P. 9(h), commenced by arrest and attachment of monies due charterers from the sub-charter of the M/S Drys -- Atlantic & Great Lakes Steamship Corporation of New York.

In seeking to vacate the arrest and attachment, defendants argue that the arbitration clauses in the time charter and the supplemental agreement are binding on the owners, thereby denying this court's subject matter jurisdiction, and that the use of attachment in a district court to secure the possible judgment of a foreign, pending arbitration is offensive to the doctrine of forum non conveniens. Plaintiffs respond that this court has clear subject matter jurisdiction and that the maintenance of security for an arbitration through the use of attachment is explicitly countenanced by Title 9 of the U.S. Code and by the Supplemental Rules for Admiralty of the Federal Rules of Civil Procedure. Plaintiff further argues that attachment, as a traditional maritime security device, should not be denied in a case where

the monies levied upon are within the district court's jurisdiction. The resolution of this dispute is not clear and no controlling authorities have been cited.

The arbitration clause in the charter party expresses the clear intention of the parties to make both dispute resolution procedures and forum elections part of their contract. Early decisions reflected a judicial rejection of attempts to "oust" a domestic court of jurisdiction in advance of suit. See, e.g., Benson v. Eastern Building & Loan Association, 174 N.Y. 83, 66 N.E. 627 (1903) and generally 56 A.L.R.2d 300 (1957). The enactment of the United States Arbitration Act in 1925, 9 U.S.C. § 1 et seq., reversed this hostile trend toward arbitration and, at least in admiralty cases, forum selection clauses have been sanctioned by the U.S. Supreme Court. The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972).

In Bremen a foreign towing company contracted with a domestic oil drilling company to transport drilling machinery from Louisiana to Italy. Included in the contract was a forum selection clause designating the High Court of Justice in London as the forum for litigation of all contractual disputes.

The drilling rig was damaged in transit, the towing vessel sought repairs in a United States port and the drilling company brought suit in admiralty in district court. Both the district court and the court of appeals held the forum selection clause unenforceable. The Supreme Court reversed, rejecting the argument that a forum selection clause is an attempt to divest our courts of jurisdiction. The court opined that there were "compelling reasons why a freely negotiated private international agreement, unaffected by fraud, undue influence, or overweening bargaining power should be given full effect." 407 U.S. at 12-3. The issue Bremen holds, was not one of "ousting" jurisdiction by a contract term, but the district court's limiting the exercise of its jurisdiction to enforcement of the forum selection clause. For a district court to reject such freely agreed upon clauses, the Supreme Court declared, would be a parochial exercise and would be a severe impediment to the participation of domestic businesses in the ever-burgeoning field of international commerce. In the absence of a showing that an agreed upon forum denies a party a fair, just and reasonable adjudication

Bremen supports the enforcement of forum selection clauses in international commerce. Since there has been no claim that the arbitration in London is unfair, unjust or unreasonable, this court should not exercise its subject matter jurisdiction over the underlying admiralty claim.

Notwithstanding this decision, the plaintiff's attachment can be sustained if his arguments as to a right to security under either the Supplemental Rules or Title 9 are valid. Clearly, plaintiff's attachment is not cognizable as a quasi-in rem basis for suit. See F. R. Civ. P. 4(e). The subject matter of any such suit is, by contract, before the London arbitrators. This contract, coupled with Bremen, forecloses any assertion of the attachment as a basis for an action for damages. (Plaintiff now concedes this to be so.) Neither can this attachment be sustained as an action on a judgment since the plaintiff has yet to prevail in the arbitration in London. Should the arbitrators rule in favor of plaintiff, an attachment to secure the judgment would clearly lie; until then it will not. Does there, nevertheless, remain some intermediate basis for attachment under Title 9, U.S.C. or the Supplemental Rules?

Plaintiff argues that 9 U.S.C. § 8 provides a basis for the use of attachment by a district court to secure the potential results of an ongoing arbitration. However, in this case the defendants have not refused to arbitrate and Section 8 is not a vehicle to secure an arbitration between international parties that has already commenced. See 9 U.S.C. §§ 202, 207. The use of state attachment processes to secure ongoing proceedings in a foreign forum has been held improper. Sanko Steamship Co. v. Newfoundland Refining Company Ltd., 411 F. Supp. 285 (S.D.N.Y. 1976). Whether there is a need for such a security option under maritime rules is a matter of some debate. See Healy, "Obtaining Security in Aid of Arbitration", Lloyds Maritime and Commercial Quarterly, August, 1976, at 267-8.

9 U.S.C. § 8 provides a method for compelling arbitration without having to pursue the underlying action in district court. The section provides that the "aggrieved may begin his proceeding hereunder by libel and seizure. . .". The district court may stay the action, retain the attachment, and direct the parties to arbitrate. The retained attachment serves not only as a security for an award but also as a device to keep a reluctant party in arbitration: Should the court release the attachment after ordering arbitration,

the party seeking to avoid the arbitration has less reason to participate than he would with the attachment held. However, in this case the parties have begun an arbitration, only the pace of which concerns plaintiff.

Clearly, Chapter 2 of Title 9, United States Code, insures that the London arbitration award, should plaintiff gain one, will be enforceable as a judgment in domestic courts. Therefore, the use of an attachment in this case would not appear to be necessary under 9 U.S.C. § 8 and Bremen. Since the underlying case will, in light of Bremen, not be a cause of action in the district court, and since plaintiff has not begun his action with the attachment but rather is seeking merely to insure his recovery on an award, the attachment does not appear to be valid under a literal reading of 9 U.S.C. § 8. On the other hand, 9 U.S.C. § 8 clearly contemplates the commencement of a maritime action by arrest and attachment as a preliminary to the district court's ordering parties into a contractually agreed upon arbitration. While such a court-ordered arbitration is in progress the action may be stayed, but the attachment (unless

bonded and released) continues. Practically speaking, what difference is there in allowing this attachment to continue although the action is stayed? Under Section 8 the court retains jurisdiction to enter a decree upon the arbitration award so the attachment would be available for that purpose.

This court has applied 9 U.S.C. § 8 to the situation where an outstanding demand had not yet resulted in arbitration at the time suit was commenced. E.g., Instituto Cubano De Establizacion Del Syucar v. T/V Firebird, 130 F. Supp. 170 (S.D.N.Y. 1954). See also Konstantinidis v. S.S. Tarsus, 248 F. Supp. 280 (S.D.N.Y. 1965) aff'd, 354 F.2d 240 (2d Cir. 1965). Prior decisions have not dealt with the validity of providing security for an ongoing arbitration by means of an after-occurring arrest and attachment. Yet, as plaintiff notes, an agreement to arbitrate does not necessarily strip the plaintiff of his ability to seek traditional maritime provisional remedies. Texas San Juan Oil Corp. v. Anson Offshore Oil Drilling Co., 194 F. Supp. 396 (S.D.N.Y. 1961).

There is an additional consideration. This is a

foreign contract by foreign parties for a ship of foreign registry and a cause of action arising in other than domestic waters. The sole connection with the district is a sum of money representing sub-freights and hire from a sub-charterer to the defendant. The retention of the attachment would not materially advance the resolution of the underlying arbitration. Rather it would permit the plaintiff to encumber the assets of the charterer in a manner not contemplated by the parties when they made their two contractual arrangements for resolving these charter disputes. Indeed, the plaintiff could follow defendants around the globe attaching their assets until the amount of the claim was covered. In this regard it should be noted that defendants challenge the propriety of the attachment of sub-freights and sub-charter hire without regard to the preexisting arbitration. Clause 18 of the Charter provides plaintiff with "a lien upon all cargoes, and all sub-freights for any amounts due under this Charter . . . ". Such language has been held to include claims for damage and to extend to all monies due a charterer under a sub-charter. Freights of the Kate, 63 F. 707 (S.D.N.Y.

1894). At least as to the hire not paid by the charterers to the owner during the period of asserted extraordinary repairs, the lien would appear to be valid. Since the amount of monies attached (under one hundred thousand dollars) is less than a third of the lost hire and barely an eighth of the total sum claimed by the plaintiff, the attachment is neither excessive nor improper.

Viewing the central issue in the abstract, the question is a close one. Resolution of the question is made more difficult by the fact that prior to the institution of this action the parties entered into a "Memorandum of Agreement," mentioned earlier, by which they attempted to resolve the dispute and agreed that if their surveyors could not come to an agreement:

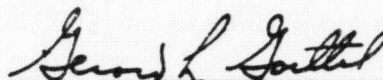
"It is the stated and irrevocable intention of both parties hereto to proceed with all arbitrations required hereunder as a matter of urgent priority and the parties agree to co-operate in seeking directions from their arbitrators and/or by appointing separate tribunals for isolated matters capable of speedy determination with a view to resolving any outstanding disputes well within the validity of this Charterparty. The terms of this Agreement shall for purposes of the Arbitration Clause in the Charterparty be deemed to be a part of the Charter."

Defendants argue that, in light of this agreement, it was improper for the plaintiff to institute this new litigation, for whatever purpose. The law is quite clear in this circuit that where contractual language is susceptible of different reasonable interpretations this presents an issue of fact which should not be determined on a summary judgment motion. Aetna Casualty & Surety Co. v. Giesow, 412 F.2d 468, 471 (2d Cir. 1969); Painton & Co. v. Bourns, Inc., 442 F.2d 216, 233 (2d Cir. 1971); Lemelson v. Ideal Toy Corp., 408 F.2d 860, 863 (2d Cir. 1969); Union Insurance Society v. Wm. Gluckin & Co., 353 F.2d 946, 950-51 (2d Cir. 1965); Boro Hall Corp. v. General Motors Corp., 164 F.2d 770, 772 (2d Cir. 1947); Heyman v. Commerce and Industry Insurance Company, 524 F.2d 1317 (2d Cir. 1975). It follows that if the issue is not susceptible of resolution on a summary judgment motion, it certainly cannot be evaluated on a motion to vacate the attachment and dismiss the complaint. Consequently, the motion is denied subject to renewal upon affidavits setting forth the unquestioned contractual intent of the parties in the "Memorandum of Agreement" dated July 2, 1976, or, if that is not possible, the availability of

witnesses to testify as to the contractual intent.

SO ORDERED:

Dated: New York, N.Y.,
February 18, 1977.



U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....
DRYS SHIPPING CORPORATION,

Plaintiff,

-against-

Freights, Sub-freights, Charter
Hire and/or Sub-Charter Hire of
the M.S. DRYS,

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants,

and

ATLANTIC AND GREAT LAKES STEAMSHIP
CORPORATION,

Garnishee.

.....X

Notice is hereby given that defendants,
A/S Falkefjell and A/S Dovrefjell, hereby appeal to
the United States Court of Appeals for the Second
Circuit from the order dated February 15, 1977,
denying defendants' motion to vacate arrest and
attachment.

Dated: New York, New York
March 1, 1977

HAIGHT, GARDNER, POOR & HAVENS

By Donald J. Kennedy
Donald J. Kennedy

Attorneys for Defendants
A/S Falkefjell and A/S Dovrefjell

TO: CLERK OF THE COURT
United States District Court
for the Southern District of
New York

FILE COPY
3-1-77
ENTERED
RE
By: AV

6001
3/1/77

TO: KIRLIN, CAMPBELL & KEATING
Attorneys for Plaintiff
120 Broadway
New York, New York 10005

DONOVAN, MALOOF, WALSH & KENNEDY
Attorneys for Garnishee
161 William Street
New York, New York 10038

77-GEN-REE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

DRYS SHIPPING CORPORATION,

Plaintiff,

77 Civ. 73 (GLG)

GARNISHEE'S ANSWER

-against-

Freights, Sub-Freights, Charter Hire
and/or Sub-Charter Hire of the M.S. DRYS

and

A/S FALKEFJELL and A/S DOVREFJELL

Defendants.

-----X

The Answer of Atlantic & Great Lakes Steamship Corporation,
Garnishee, to the process of Maritime Attachment and Garnishment herein,
alleges as follows:

FIRST: This Garnishee, Atlantic & Great Lakes Steamship Corporation, at the time of the service of process in this suit upon it, owed A.S. Olsen & Ugelstad, Oslo, as time chartered owner of the M.S. DRYS, the sum of \$53,500.00 constituting an advance payment of 15 days charter hire due under a certain contract between Garnishee and A.S. Olsen & Ugelstad, dated December 20, 1966. This sum is calculated as 15 days hire at \$4,000.00 per day, less a commission of 2-1/2% deductible as per charter party.

SECOND: A further payment of hire will become payable on or about January 21, 1977, also at the rate of \$4,000.00 per day for a number of days which cannot now be accurately estimated.

THIRD: Except as alleged in paragraphs FIRST and SECOND

herein this Garnishee did not hold any other debits, credits, effects, monies or other assets of or belonging to the defendants herein or A/S Olsen & Ugelstad, nor is this Garnishee indebted in any way to the said defendant or A/S Olsen & Ugelstad.

WHEREFORE, this Garnishee prays that an order be entered directing the disposition of the aforesaid monies and dismissing it from all other further proceedings herein and that costs and expenses incurred may be decreed to it.

DONOVAN, MALOOF, WALSH & KENNEDY
Attorneys for Garnishee
Atlantic & Great Lakes Steamship Corp.

BY: /s/ Richard E. Repetto
Richard E. Repetto
A Member of the Firm

Office & P.O. Box
161 William Street
New York, New York 10038
(212) 964-3553

TO:

Clerk of the Court
United States District Courthouse
Foley Square
New York, New York

Kirlin, Campbell & Keating
Attorneys for Plaintiff
120 Broadway
New York, New York 10005

Haight, Gardner, Poor & Havens
One State Street Plaza
New York, New York 10004
Attorneys for Defendants

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

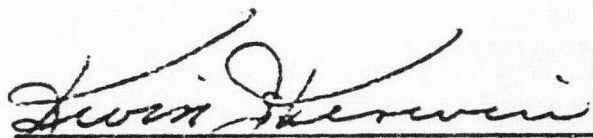
KEVIN J. KERWIN, being duly sworn deposes and says:

I am the Operations Manager of Atlantic & Great Lakes Steamship Corporation, the Garnishee named in the foregoing answer.

I have read the foregoing answer and know the contents thereof and it is true to the best of my knowledge, based on information and belief.

The source of my information and the grounds for my belief are documents, records and information in the files of the Garnishee.

The reason this verification is made by me and not by the Garnishee is that it is a corporation.



KEVIN J. KERWIN

Sworn to before me this

7th day of January, 1977.



Notary Public

THOMAS P. PARRY
Notary Public, State of New York
No. 24-1006200
Qualified in Essex County
Commission Expires March 22, 1977

NOTICE OF ENTRY

Sir:-Please take notice that the within is a (certified)
true copy of a
duly entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

DONOVAN, MALOOF, WALSH & KENNEDY

Attorneys for

Office and Post Office Address

161 WILLIAM STREET

NEW YORK, N. Y. 10036

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:-Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

On the day of 19
at M.

Dated,

Yours, etc.,

DONOVAN, MALOOF, WALSH & KENNEDY

Attorneys for

Office and Post Office Address

161 WILLIAM STREET

NEW YORK, N. Y. 10036

To

Attorney(s) for

Index No.

Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRYS SHIPPING CORPORATION,

Plaintiff,

-against-

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of
the U.S. IRYS

and

A/S BALSTENJUL and A/S DOWNFJELL
Defendants

GARNISON'S ARMY

DONOVAN, MALOOF, WALSH & KENNEDY

Attorneys for

Office and Post Office Address, Telephone

161 WILLIAM STREET

NEW YORK, N. Y. 10036

(212) 964-3555

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X
DRYS SHIPPING CORPORATION,

Plaintiff, :

-against- :

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYS,

and :

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants. :

.....X

Upon the annexed affidavit of Donald J. Kennedy,
sworn to on the 7th day of January, 1977, and all the
other proceedings herein, it is hereby

ORDERED, that the plaintiff, Drys Shipping
Corporation, and its attorneys show cause before
Honorable Gerard L. Goettel in Room 409 at the United
States Courthouse, Foley Square, Borough of Manhattan,
City and State of New York, on the 10th day of January,
1977 at 12 noon or as soon thereafter as counsel can
be heard, why an order should not be granted vacating
the attachment obtained pursuant to Rule 3(1) of the
Supplemental Admiralty and Maritime Claims of the Federal
Rules of Civil Procedure, setting aside the alleged
maritime lien and dismissing the Complaint for lack of
subject matter jurisdiction or, in any event, dismissing
the Complaint on the grounds of forum non conveniens,
and for such other and further relief as the Court may
deem just and proper,

1-7-77

R
E

MP.

ORDER TO
SHOW CAUSE

77 Civ. 73 (GLG)

WITH A STAY

~~FURTHER ORDERED, that all proceedings on the part of the plaintiff in attaching Freights, Sub-Freights, Charter Hire and Sub-Charter Hire of the M.S. Drys and attaching all funds, debts, credits, effects and choses in action of the defendant is hereby stayed until a determination of this motion,~~

FURTHER ORDERED, that personal service of a copy of this Order, together with a copy of the annexed papers upon which it was granted, upon Messrs. Kirlin, Campbell & Keating, as attorneys of record for the plaintiff, and upon Messrs. Donovan, Maloof, Walsh & Kennedy, as attorneys for garnishee, Atlantic & Great Lakes Shipping Corporation, on or before January 7th 1977 at 6:³⁰ P.M. be deemed good and sufficient service.

Dated: New York, New York
January 7, 1977.

5:15 P.M.

S/GERARD GOETTEL
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X

DRYS SHIPPING CORPORATION, :

Plaintiff, :

-against- :

Freights, Sub-Freights, Charter :
Hire and/or Sub-Charter Hire of the :
M.S. DRYs, :

AFFIDAVIT

77 Civ. 73 (GLG)

and :

A/S FALKEFJELL and A/S DOVREFJELL, :

Defendants. :

.....X

Donald J. Kennedy, being duly sworn, deposes
and says:

1. I am an attorney-at-law and associate
of the firm of Haight, Gardner, Poor & Havens, attorneys
for A/S Falkefjell and A/S Dovrefjell, defendants herein,
and submit this affidavit in support of their motion
to vacate the attachment, set aside the alleged maritime
lien and dismiss the Complaint in the captioned action.

2. Drys Shipping Corporation of Monrovia,
registered Owners of the Greek motorship, M.S. Drys,
chartered her to A/S Falkefjell and A/S Dovrefjell,
Charterers of Oslo, pursuant to the terms of a New York
Produce Form Exchange Charter Party dated Oslo, August
22, 1972. A copy of that charter is annexed as Exhibit 1.
The charter was for a period of 5 years, 45 days more
or less in Charterers' option, and the vessel is currently
performing pursuant to that charter. Clause 17 of the
charter provides for arbitration in London and states:

"That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons in London, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men."

Although the printed form of the charter in its unamended form provides for arbitration in New York, the provision for New York arbitration was crossed out and the words "in London" were included. Moreover, a number of other modifications were made in the charter crossing out New York and inserting London, further evidencing the parties' intention to proceed in London.

3. On January 6, 1977, plaintiff filed a Complaint in Admiralty in the United States District Court for the Southern District of New York seeking (1) a judgment against defendants A/S Falkefjell and A/S Dovrefjell, (2) a warrant for the arrest of the freights, sub-freights, charter hire and/or sub-charter hire of the M.S. Drys in the hands of Atlantic & Great Lakes Steamship Corporation, and (3) a process for maritime attachment and garnishment against the defendants in the amount of \$793,686.75 and funds in the hands of various bank accounts of the defendants in New York.

4. Arbitration proceedings were commenced by Owners in London on March 26, 1976. The relief which the plaintiff seeks in this action is essentially identical to the relief which it is seeking by means of arbitration in London. ^{Under} Owners' solicitors in London

are Sinclair, Roche & Temperley, and the solicitor who is personally handling this matter is Mr. Harvey G. Williams. Annexed hereto as Exhibit 2 is a telex report which we received today which outlines the status of the London arbitration proceedings. It is unquestionably clear that Owners have initiated and actively participated in the London arbitration proceedings.

5. As will be noted in the memorandum of law in support of motion, recent court decisions, i.e. The Sanko Steamship Co. Ltd. v. Newfoundland Refining Company Ltd., 411 F.S. 285 (SDNY - 1976), have held that when a charter provides for London arbitration, it requires the dismissal of the shipowner's action for breach of charter in which the shipowner attached Charterers' funds.

6. On July 2, 1976, Owners and Charterers, without admitting liability, entered into a contract which, amongst other things, established procedures by which the responsibility for damages allegedly caused to the vessel by stevedores employed by Charterers would be established by surveyors appointed by each party. With regard to the procedural aspects of this agreement, it provided as follows:

"It is the stated and irrevocable intention of both parties hereto to proceed with all arbitrations required hereunder as a matter of urgent priority and the parties agree to cooperate in seeking directions from their arbitrators and/or by appointing separate tribunals for isolated matters capable of speedy determination with a view to resolving any outstanding disputes well within the validity of this charter party. The terms of this agreement shall for purposes of the arbitration clause in the charter party be deemed to be a part of the charter."

Disputes having arisen between the surveyors as to the nature of the damages on board the vessel, these matters were submitted to arbitrators in London.

7. As a result of the Order of Attachment A/S Falkefjell and A/S Dovrefjell may be caused to suffer irreparable harm, since all amounts which may be subject to the attachment order are required in its daily commercial transactions and its business relations will be caused to suffer adverse consequences if its funds remain under attachment. This matter is of the utmost urgency and it is for that reason why we have made this motion by means of an Order to Show Cause.

8. A/S Olsen and Ugelstad of Oslo, Charterers' managing agents, as time-chartered Owners, chartered the M.S. Drys to Atlantic & Great Lakes Steamship Corporation pursuant to the terms of a New York Produce Form Exchange Time Charter dated December 20, 1976 for a time-chartered trip taking delivery of the vessel at a Mississippi River port and to be returned at a safe port U.K. or Bordeaux/Hamburg range. A copy of the charter is annexed as Exhibit 3.

9. Pursuant to the charter party dated December 20, 1976, Atlantic & Great Lakes Steamship Corporation were required to pay charter hire to the time-chartered Owners in the amount of \$4000 per day, semi-monthly in advance. The Owners have served upon Atlantic & Great Lakes a notice of lien pursuant to Clause 18 of the head charter, a copy of which is annexed as Exhibit 4. The letter dated January 6, 1977 states that amounts are due to Owners by Charterers under the charter party, yet it fails to state the basis for these claims. Furthermore, the Complaint

does not contain the particulars of the claim as is required by "Supplemental Rules for Certain Admiralty and Maritime Claims" Rule E(2)(a). These defects are fatal to plaintiff's action.

10. No previous application for the relief herein requested has been made.

WHEREFORE, defendant requests that an order be entered vacating the attachment, setting aside the alleged maritime lien, dismissing the Complaint and for such other and further relief as the Court may deem just and proper.

Donald J. Kennedy

Sworn to before me this
7th day of January, 1977.

Notary Public

See

THOMAS J. CRONIN
Notary Public, State of New York
No. 05401000
Qualified in New York County
Cert. Filed in New York County
Commission Expires March 30, 1978

As... For Owners

For use on behalf of Charterers
as per authority
of Mr. H.M. WATSON
H.M. Watson
As Agents only.

RIDERS TO M/S "DRYS" CHARTER PARTY DATED OSLO 22. AUGUST 1972.

Clause 29.

An on-hire survey is to be held at the delivery port and both parties are to appoint a surveyor, both of whom to prepare a single survey report without prejudice to his right to file a separate report setting out items upon which the surveyors cannot agree. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expense of both surveys to be borne equally.

Clause 30.

The Charterers shall not be responsible for any damage to the vessel's hull, machinery and equipment caused by the Charterers or their agents, servants, employees or by any independent contractor, including stevedores, unless the master has complied with the following stipulations:

- 1 - At the time of the occurrence informed the supercargo and the Charterers' agents in writing of the damage sustained,
- 2 - in writing held the party causing the damage liable for the damage, and requested a written acknowledgement of liability,
- ③ - Master to cooperate with Charterers agents or supercargo in establishing liability and cost of repairing damage.
- 4 - informed the Charterers by carbon copies of his letters under subject 1 and 2 above.

Clause 31.

Charterers to have the benefit of any return insurance premium received by the Owners from the underwriters (as and when received from underwriters) by reason of vessel being in port not less than 30 days for any time the vessel is on hire.

✓ Clause 32.

The vessel to deliver with valid deratisation certificate and Owners to maintain same during the full currency of this Charter.

Clause 33.

Charterers shall have the option of laying up the vessel instead of working her in which case the hire provided for under this charter Party shall be reduced by the amount by which Owners are capable of reducing their expenditure under this Charter.

Clause 34.

Charterers to have the privilege of placing their funnel mark on stack, the painting of same to be on their time and at their expense. Funnel to be repainted by Charterers on their time and expense. Type of paint to be approved by master.

Clause 35.

During full currency of this Charter Party the Owners shall keep the vessel fully capable and equipped to transit the Panama Canal and the Suez Canal, in accordance with the rules and regulations governing navigation of the canals mentioned herein promulgated from time to time by the local Authorities.

Clause 36.

Charterers to have the liberty of shipping upto a maximum of 500 tons of dangerous, injurious or inflammable cargo on deck at Charterers/Shipppers risk and expense as shipped in their own or associated companies' vessels and same always to be labelled, marked, packed, loaded, stowed and discharged in accordance with Board of Trade and U.S. Regulations. Any extra expenses including extra insurance etc. to be for Charterers account.

Clause 37.

Any equipment including dunnage and separation material put on board by Charterers to remain their property and to be well taken care of by vessel's officers, fair wear and tear excepted.

Clause 38.

New Both to Blame Collision Clause, New Jason Clause and War Risk Clause 1 and 2 and Nuclear Clause as attached to be incorporated in this Charter Party. U.S./Canadian Clause Paramount where applicable to be incorporated in all Bills of Lading issued under this Charter Party.

Clause 39.

If the vessel lays idle owing to strike of officers and crew no hire to be paid.

Clause 40.

War Risk Insurance Premium to be for Owners' account, but in the event of war involving any increase of war risk insurance premium on vessel's hull and machinery, Charterers to pay any excess over the premium in existence at the date of this Charter Party.

Clause 41.

During the period of this Charter Party the Owners guarantee that the vessel shall, at all times, comply with all regulations and requirements enabling her to trade on, load and unload cargo, embark and disembark crew in the ports of the United States of America and Canada and any other port or ports and/or navigable waters within the trading warranties of this Charter Party, including the Panama and Suez Canals. If the vessel is not permitted to enter such ports and/or pass through such canals and navigable waters or being detained and/or delayed by any authority by reason of non compliance with said regulations and requirements, then the vessel shall be off hire for her Owners' account until she is again complying with said regulations and requirements, and her Owners shall pay or refund to the Charterers any expenses incurred in consequence of such non compliance.

Clause 42.

Vessel is fitted with a fresh water evaporator.

Clause 43.

Each party to have the right to cancel this contract in case of War de Jure or de Facto involving any of the following powers: Greece, Norway, U.S.A., Russia, Great Britain and China between themselves.

Clause 44.

If required by Charterers the Master, Charterers and/or their agents are hereby authorized by Owners to sign on Master's and/or on Owners' behalf Bills of Lading as presented in accordance with mates and tally clerks receipts without prejudice to this Charter Party.

Clause 45.

It is understood that vessel has full bunkering privileges at U.S. ports and is not restricted due to her having previously traded to any communist or communist controlled port(s).

Clause 46.

Vessel is guaranteed suitable for carrying cargoes of grain in bulk in all holds without requiring any securing arrangements. Vessel to have onboard at any time of this timecharter period all necessary valid documents and certificates including grain loading plan approved by government of her flag. Her Classification Society and National Cargo Bureau under their current directives or similar competent authority of the loading ports/discharging ports, as provided for in clause 41.

Clause 47.

Charterers have the right to inspect vessel superficially at any time. Owners or Master to give every facility and assistance to carry out such inspection.

Clause 48.

Should the vessel put back whilst on a voyage by reason of an accident or breakdown to the vessel or sickness or accident to a member of the crew or any reason on board other than persons travelling by Charterers request, the hire shall be suspended from the time of her putting back until she is again in the same or an equivalent position and the voyage to be resumed therefrom. The cost of fuel consumed during the period and any other expenses to be for Owners' account.

Clause 49.

It is understood that the vessel is a bulkcarrier having no cargo handling gear. If the vessel's gear for opening and closing hatches, which work always to be done by the crew, provided permitted by local regulations, becomes inoperative, vessel to be off-hire and stevedores stand-by time for any loss of time occasioned thereby or by non compliance with clause 41 or 46, to be for Owners' account. Such off-hire to be calculated pro rata and only to count if ship's loading or discharging is delayed.

Clause 50.

Any extra insurance due to vessels age, flag, ownership or classification to be for Owners' account.

Clause 51.

Owners warrant that the vessel has not traded Far East communist countries during past 6 months, Owners also warrant that the vessel is not blacklisted by Arab countries. Owners guarantee that the vessel or any other vessel under same ownership, management, operation or control has not entered any Cuban or North Vietnam port or place after September 1st, 1962, nor will enter any such port or place prior to delivery under this Charter Party.

Clause 52.

The Owners guarantee the vessel to be delivered with, and to hold throughout the timesharter period, valid certificates and necessary equipment as regards pollution, safety/health of dockworkers/long-shoremen/crew and passengers, deratisation, vaccination, canal equipment etcetera according to the stipulations in clause No. 41 above. Owners to be solely responsible for all pollution claims. Pollution caused by cargo carried on Charterers behalf to be for Charterers account.

Clause 53.

In case Charterers tender deck cargo they shall have the option of welding padeyes/lugs on deck/hatches and in holds but same to be removed prior redelivery in Charterers time and at their expense if required by Owners.

Clause 54.

Charterers may deduct from the payment of charter hire any amount disbursed for Owners account and supported by vouchers. Charterers shall be allowed to deduct from charter hire instalments amounts disbursed or to be disbursed for Owners account as well as off-hire incurred or estimated. From the last hire payment Charterers may deduct the estimated amount of expenses disbursed or to be disbursed by them for Owners account, including the estimated cost of bunkers remaining onboard on redelivery and for which vouchers have not reached the Charterers for submission to the Owners.

Clause 55.

If Charterers so request during the time charter period the wing tank openings to be closed in order to reduce canal transit expenditure. This to be effected in Charterers time and at their expense and openings to be restored to Masters satisfaction at Charterers time and expense prior to redelivery.

Clause 56.

The cost of any radio, telegrams and/or telephone calls made by the master to Charterers or their agents to be for Charterers account. The cost of cigarettes, drink, petty expenses incurred by the master in direct performance of this Charter Party to be for Charterers account, but to be supported by documentation.

Clause 57.

Charterers shall have the right to carry harmless deck cargo like containers construction material etcetera, entirely at Charterers risk, any extra expenses for securing lashing welding of padeyes etc. necessary to be for Charterers time and account. Removal of same if so decided by Owners to be done at Charterers time and account.

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Clause 58.

Vessel to be delivered with bunkers according to Charterers instructions prior to delivery, to be given within 5 days of receipt of 45 days notice of delivery. Vessel to be redelivered with similar quantities but sufficient to reach nearest bunkering port. Charterers at the time of delivery and Owners at the time of redelivery to take over and pay for bunkers at Owners current price at port of delivery and redelivery. contract

Clause 59.

Vessel with officers and crew to work night and day, Saturdays afternoon, Sundays and Holidays if required by Charterers. Charterers are to pay to Owners lumpsum U.S.\$ 350,- per calendar month, for all overtime work done by master, officers and crew. This work includes, but is not limited to, all work on ordinary daytime and overtime (as above), in connection with assistance in preparing vessel for cargo work, work in holds, and watching, rigging, shifting of berths, opening and closing of hatches when shore regulations permit, rigging and unrigging of hatchtents etc. Charterers to pay for cleaning of holds if carried out by crew. However such payment to be maximum British pounds 40/-/- per hold.



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(27)
Mr. Moore

FOR DON KENNEDY PSE URGENT

DRYS

YOU HAVE REQUESTED US TO INDICATE THE STATUS OF THE ARBITRATION PROCEEDINGS IN THIS MATTER.

1. THE ARBITRATION WAS COMMENCED BY OWNERS NOMINATING A RESIDENT LONDON ARBITRATOR ON 26 MARCH 76. WE RESPONDED BY NOMINATING ANOTHER LONDON ARBITRATOR ON BEHALF OF CHARTERERS MSRS FALKEFJELL AND DOVREFJELL ON 31 MARCH.
2. THIS ARBITRATION AT THE TIME CONCERNED LIABILITY FOR THE COST AND TIME INVOLVED IN CLEANING HEAVY RUST SCALE FROM THE HOLDS PREPARATORY TO THE LOADING OF A CLEAN BULK CARGO.
3. FROM APRIL ONWARDS A NUMBER OF OTHER DISPUTES AROSE BETWEEN OWNERS AND CHARTERERS AND THESE WERE BY CONSENT TREATED AS BEING COVERED BY THE SAME SUBMISSION TO ARBITRATION.
4. THE FIRST HEARING BEFORE THE ARBITRATORS TOOK PLACE ON 1 SEPT WHEN WE APPRISED THE TRIBUNAL OF THE FACTS AND
Exhibit 2 SOUGHT AN ORDER ALLOWING A SURVEYOR TO ATTEND ON BOARD THE VESSEL UNDER CL 47 OF THE CHARTER. AFTER ARGUMENT HAD BEEN HEARD FOR ALMOST AN HOUR THIS HUNG WAS ADJOURNED AND OVERNIGHT THE OWNERS CONCEDED THE POINT.

5. IN DECEMBER LAST TEN OWNERS REQUESTED A FURTHER APPOINTMENT BEFORE THE ARBITRATORS TO LAY DOWN PROCEDURES TO BE FOLLOWED FROM HERE ONWARDS. WE REQUESTED THAT THIS HEARING BE DEFERRED UNTIL THIS MONTH TO ALLOW US TO GET INSTRUCTIONS. THIS REQUEST WAS NOT OPPOSED AND WE HAVE NOW RECEIVED THE INSTRUCTIONS NECESSARY TO GO BEFORE THE ARBITRATORS AGAIN NEXT WEEK.

IT IS NOW AGREED THAT EVERY EFFORT SHOULD BE MADE BY BOTH PARTIES TO HAVE THE FINAL HEARING IF POSSIBLE WITHIN THE FIRST HALF OF THIS YEAR AND PREPARATIONS ARE IN FULL SWING ON BOTH SIDES TO ACHIEVE THAT OBJECT

6. AT THE FIRST HEARING THE OWNERS WERE REPRESENTED BY THEIR LONDON INSEE SOLICITOR AND A SENIOR SURVEYOR APPEARED AS AN EXPERT WITNESS. BOTH SIDES ARE REPRESENTED NOW BY SENIOR LONDON SURVEYORS AND BOTH COUNSEL AND SOLICITORS ON EACH SIDE IN LONDON HAVE BECOME DEEPLY INVOLVED IN PREPARATIONS FOR THE EXCHANGE OF WRITTEN PLEADINGS.

7. WE TRUST THIS INFORMATION IS SUFFICIENT FOR YOUR NEEDS.

SINCLAIR ROCHE AND TEMPERLEY/HGW

SINCLAIR ROCHE AND TEMPERLEY/HGW

2-3974 HGRH UR

Form 10-10 Printed and sold by the U.S. Government

Revised May 1944, 100 Madison Ave., N.Y.C. 17, N.Y.

Time Charter

GOVERNMENT OF THE UNITED STATES

Approved by the New York Produce Exchange

November 4th, 1941 to Amend Charter 24th, 1941; August 1st, 1941; October 3rd, 1940

1 This Charter Party, made and executed in New York, 22th day of December, 1940.

2 Between A. J. ... and B. J. ...

3 Owners of the said ...

4 of 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

1011 to M & T Bank

1012 654 Madison

1013 Avenue, New York

1014 N.Y. 10021

1015 on account of A/S

1016 Olsen & Uvelst

1017 with reference

1018 to "DPYS".

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1950 in London
Africa.

action of the
boats and the
oil

[illegible]

The original Charter Party is our possession.

BROKERS

As.....For Order

For and on behalf of the Owners;
A/S OLSEN & HOELSTAD, Oslo;
As per telex authority dated 12.21.1976;
By: E. HOELSTAD & COMPANY, INC.

E. Hoelstad (As Brokers Only)
President.

RIDER TO M/S DRYS CHARTER PARTY DATED IN NEW YORK DECEMBER 20TH, 1976

29. An on-hire survey is to be held at the delivery port and both parties are to appoint a surveyor, both of whom to prepare a single survey report without prejudice to his right to file a separate report setting out items upon which the surveyors cannot agree. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expense of both surveys to be borne equally.
30. The charterers shall be responsible for any damage to the vessel's hull, machinery and equipment caused by the Charterers or their agents, servants, employees or by any independent contractor, including stevedores, unless the master has complied with the following stipulations:
 1. At the time of the occurrence informed the supercargo and the Charterers' agents in writing of the damage sustained.
 2. In writing held the party causing the damage liable for the damage, and requested a written acknowledgement of liability.
 3. Master to cooperate with Charterers agents or supercargo in establishing liability and cost of repairing damage.
 4. Informed the Charterers by carbon copies of his letters under subject 1 and 2 above.
31. Charterers to have the benefit of any return insurance premium received by the Owners for the underwriters (as and when received from underwriters) by reason of vessel being in port not less than 30 days for any time the vessel is on hire.
32. The vessel to deliver with valid deratisation certificate and Owners to maintain same during the full currency of this Charter.
33. Charterers shall have the option of laying up the vessel instead of working her in which case the hire provided for under this Charter Party shall be reduced by the amount by which Owners are capable of reducing their expenditure under this Charter.
34. Charterers to pay Owners on redelivery U.S.\$ 1500 (fifteen hundred dollars) in lieu of holdcleaning.
35. During full currency of this Charter Party the Owners shall keep the vessel fully capable and equipped to transit the Panama Canal and the Suez Canal, in accordance with the rules and regulations.
36. Charterers to have the liberty of shipping up to a maximum of 500 tons of dangerous, injurious or inflammable cargo on deck at Charterers/Shippers risk and expense as shipped in their own or associated companies' vessels and same always to be labelled, marked, packed, loaded, stowed and discharged in accordance with Board of Trade and U.S. Regulations. Any extra expenses including extra insurance etc. to be for Charterers' account.
37. Any equipment including dunnage and separation material put on board by Charterers to remain their property and to be well taken care of by vessel's officers, fair wear and tear excepted.
38. New Both to Blame Collision Clause, New Jason Clause and War Risk Clause 1 and 2 and Nuclear Clause as attached to be incorporated in this Charter Party. U.S./Canadian Clause Paramount where applicable to be incorporated in all Bills of Lading issued under this Charter Party.
39. If the vessel lays idle owing to strike of officers and crew no hire to be paid.
40. War Risk Insurance Premium to be for Owners' account, but in the event of war involving any increase of war risk insurance premium on vessel's hull and machinery, Charterers to pay any excess over the premium in existence at the date of this Charter Party.

RIDER TO CHARTER PARTY DATED IN NEW YORK DECEMBER 20TH, 1976 - TMS DRYC CONT.

41. During the period of this Charter Party the Owners guarantee that the vessel shall, at all times, comply with all regulations and requirements enabling her to trade on, load and unload cargo, embark and disembark crew in the ports of the United States of America and Canada and any other port or ports and/or navigable waters within the trading warranties of this Charter Party including the Panama and Suez Canals. If the vessel is not permitted to enter such ports and/or pass through such canals and navigable waters or being detained and/or delayed by any authority by reason of non compliance with said regulations and requirements, then the vessel shall be off hire for her Owners' account until she is again complying with said regulations and requirements, then the vessel shall be off hire for her Owners' account until she is again complying with said regulations and requirements, and her Owners shall pay or refund to the Charterers any expenses incurred in consequence of such non compliance.
42. Vessel is fitted with a fresh water evaporator.
43. Each party to have the right to cancel this contract in case of War de Jure or de Facto involving any of the following powers: Greece, Norway, U.S.A., Russia, Great Britain and China between themselves. Vessel may only trade communist or communist controlled territories provided that at the time of trading they are acceptable to the U.S. and Greek Navies.
44. If required by Charterers the Master, Charterers and/or their agents are hereby authorized by Owners to sign on Master's and/or on Owners' behalf Bills of Lading as presented in accordance with mates and tally clerks receipts without prejudice to this Charter Party.
45. It is understood that vessel has full bunkering privileges at U.S. ports and is not restricted due to her having previously traded to any communist or communist controlled port.
46. Vessel is guaranteed suitable for carrying cargoes of grain in bulk in all holds without requiring any securing arrangements. Vessel to have onboard at any time of this timecharter period all necessary valid documents and certificates including grain loading plan approved by government of her flag. Her Classification Society and National Cargo Bureau under the current directives or similar competent authority of the loading ports/discharging ports, as provided for in clause 41.
47. Charterers have the right to inspect vessel superficially at any time. Owners or Master to give every facility and assistance to carry out such inspection.
48. Should the vessel put back whilst on a voyage by reason of an accident or breakdown to the vessel or sickness or accident to a member of the crew or any reason on board other than persons travelling by Charterers request, the hire shall be suspended from the time of her putting back until she is again in the same or an equivalent position and the voyage to be resumed therefrom. The cost of fuel consumed during the period and any other expense to be for Owners' account.
49. It is understood that the vessel is a bulkcarrier having no cargo handling gear. If the vessel's gear for opening and closing hatches, which work always to be done by the crew, provided permitted by local regulations, becomes inoperative, vessel to be off-hire and stevedores stand-by time for any loss of time occasioned thereby or by non compliance with clause 41 or 46, to be for Owners' account. Such off-hire to be calculated pro rata and only to count if ship's loading or discharging is delayed.
50. Any extra insurance due to vessel's age, flag, ownership or classification to be for Owners' account.
51. Owners warrant that the vessel has not traded Far East communist countries during past 6 months. Owners also warrant that the vessel is not blacklisted by Arab countries. Owners guarantee that the vessel or any other vessel under same ownership, management, operation or control has not entered any Cuban or North Vietnam port or place after September 1st, 1962, nor will enter any such port or place prior to delivery under this Charter Party.
52. The Owners guarantee the vessel to be delivered with, and to hold throughout the timecharter period, valid certificates and necessary equipment as regards pollution, safety/health or dockworkers/longshoremen/crew and passengers, dewatering, vaccination, canal equipment etcetera according to the stipulations in clause No. 41 above. Owners to be solely responsible for all pollution claims. Pollution caused by cargo carried on Charterers' behalf to be for Charterers' account.

RIDER TO CHARTER PARTY DATED IN NEW YORK DECEMBER 20TH, 1976 - "DRYS" CONT.

53. In case Charterers tender deck cargo they shall have the option of welding padeyes/lugs on deck/hatches and in holds but same to be removed prior redelivery in Charterers time and at their expense if required by Owners.
54. Charterers may deduct from the payment of charter hire any amount disbursed for Owners account and supported by vouchers. Charterers shall be allowed to deduct from charter hire instalments amounts disbursed or to be disbursed for Owners' account as well as off-hire incurred or estimated. From the last hire payment Charterers may deduct the estimated amount of expenses disbursed or to be disbursed by them for Owners' account, including the estimated cost of bunkers remaining onboard on redelivery and for which vouchers have not reached the Charterers for submission to the Owners.
55. If Charterers so request during the time charter period the wing tank openings to be closed in order to reduce canal transit expenditure. This to be effected in Charterers time and at their expense and openings to be restored to Masters satisfaction at Charterers time and expense prior to redelivery.
56. The cost of any radio, telexgrams and/or telephone calls made by the master to Charterers or their agents to be for Charterers account. The cost of cigarettes, drink, petty expenses incurred by the master in direct performance of this Charter Party to be for Charterers account, but to be supported by documentation.
57. Charterers shall have the right to carry harmless deck cargo like containers construction material etcetera, entirely at Charterers risk, any extra expenses for securing lashing welding of padeyes etc. necessary to be for Charterers time and account. Removal of same if so desired by Owners to be done at Charterers time and account.
58. Vessel to deliver with bunkers as onboard estimated about 150/200 tons IFO and about 30 tons DO and Charterers to redeliver the vessel with approximate similar quantity. Prices at both ends to be current New Orleans prices as determined when Charterers bunkers this vessel for this trip.
59. According to the master the draught of the vessel with fully ballasted tanks and No.5 hold to top hatchcoaming is 35 feet. TPI on the vessel is 110 tons.

NEW JASON CLAUSE:

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifice, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the Carrier, salvage shall be paid for as for as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and of salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery.

NEW BOTH TO BLAME COLLISION CLAUSE:

If the liability for any collision in which the vessel is involved while performing the Bill of Lading fails to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier."

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contract.

CANADIAN CLAUSE PARAMOUNT:

This Bill of Lading, so far as it relates to the carriage of goods by water, shall have effect, subject to the provisions of the Water Carriage of Goods Act, 1936, enacted by the Parliament of the Dominion of Canada, which shall be deemed to be incorporated herein, and nothing here contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the said Act. If any terms of this Bill of Lading be repugnant to said Act to any extent, such terms shall be void to that extent but no further.

U.S.A. CLAUSE PARAMOUNT

This Bill of Lading shall have effect subject to the provisions of the Carrier of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent such terms shall be void to that extent but no further.

ORIGINAL

CHAMBER OF SHIPPING WAR RISK CLAUSES:

1. The Master shall not be required or bound to sign Bills of Lading for any blockaded port or for any port which the Master or Owners in his or their discretion consider dangerous or impossible to enter or reach.
2. (a) If any port of discharge named in this charterparty or to which the vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded,
 - (b) if owing to any war, hostilities, warlike operations, Civil War, Civil Commotions, Revolutions or the operation of International Law (a) entry to any such port or discharge of cargo intended for any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the vessel to reach such discharging port, the cargo, or such part of it as may be affected, shall be discharged at any other safe port in the vicinity of the said port of discharge as may be ordered by the Charterers (provided such other port is not blockaded or that entry thereto or discharge of cargo thereat is not in the Master's or Owners' discretion dangerous or prohibited). If not such orders be received from the Charterers within 48 hours after they or their Agents have received from the Owners a request for the nomination of a substitute discharging port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of cargo being discharged at any such other port the Owners shall be entitled to freight as if the discharge had been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port shall be paid by the Charterers and/or Cargo Owners, and the Owners shall have a lien on the cargo for freight and all such expenses.

CARRIAGE OF NUCLEAR MATERIALS.

Notwithstanding any provision whether written or printed contained in this Charter, it is agreed that nuclear fuels or radioactive waste or products are specifically excluded from the cargo permitted to be loaded or carried under this Charter Party. This exclusion does not apply to radio isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purpose, provided Owners' prior approval has been obtained to the loading thereof.



COPY

KIRLIN, CAMPBELL & KEATING

ONE TWENTY BROADWAY

NEW YORK, N.Y. 10005

January 6, 1977

BY HAND

Atlantic and Great Lakes
Steamship Corporation
76 Beaver Street
New York, New York

83863

Attention: Mr. Kevin Kerwin

Re: M.S. DRYs

Dear Sirs:

We refer to the undersigned's telephone conversations with your Mr. Kerwin and your attorney, Mr. Richard E. Rapetto, yesterday evening.

This will confirm that we are attorneys for Drys Shipping Corporation of Monrovia, Liberia, ("Owners") owners of the Greek Motor Ship DRYs, which, by time charter party dated August 22, 1972, was chartered to A/S Falkefjell and A/S Devrefjell, ("Charterers") charterers of the City of Oslo. We enclose a copy of this charter party for your information.

We have been advised by Owners that Charterers, through their managing agents, Messrs. Olsen and Ugelstad, have sub-chartered M.S. DRYs to you for a trip and that, pursuant to the terms of this sub-charter, freights, sub-

Exhibit 4

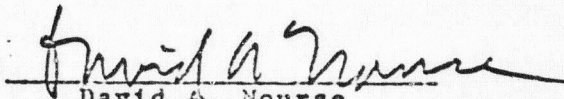
freights, time charter hire and/or sub-time charter hire is currently due and owing by you to Charterers and in your possession.

This will confirm that amounts are due to Owners by Charterers under the time charter party dated August 22, 1972 and that, pursuant to Clause 18 of the charter, Owners claim a maritime lien on any freights, sub-freights, charter hire and/or sub-charter hire now in your possession or which may later come into your possession. Please take notice that any payments by you of such freights, etc. to Charterers or to Charterers' managing agents, Messrs. Olsen and Ugelstad, will be made at your risk and peril.

Very truly yours,

KIRLIN, CAMPBELL & KEATING

BY:


David A. Nourse

DAN/csj.

Encl: a/s

cc: Donovan Maloof Walsh & Kennedy
Attention: Richard E. Repetto, Esq.

60a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYS SHIPPING CORPORATION,
Plaintiff,
-against-
Freights, Sub-Freights, Charter Hire and/or
Sub-Charter Hire of the M.S. DRYS
and
M/S FALKEFJELL and M/S DOWREJELL,
Defendants.

ORDER TO SHOW CAUSE with AFFIDAVIT

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants.

ONE STATE STREET PLAZA
NEW YORK, N. Y. 10004
(212) 344-6800

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

- ☐ that the within is a (certified) true copy of a
NOTICE OF entered in the office of the clerk of the within named court on 19
ENTRY
- ☐ that an Order of which the within is a true copy will be presented for settlement to the Hon.
NOTICE OF one of the judges of the within named Court.
SETTLEMENT at
on 19 , at M.

Dated:

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for

ONE STATE STREET PLAZA
NEW YORK, N. Y. 10004

To:

Attorney(s) for

RECEIVED

JAN 7 1977

DONOVAN, MALOOF
WATKINS & KENNEDY

N 918 CL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
DRYS SHIPPING CORPORATION,

Plaintiff

-against-

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYs,

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

----- x

1-12-77
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E
AFFIDAVIT MR.
77 Civ. 73
(GLG)

Harvey G. Williams, being duly sworn, deposes
and says:

1. I am a solicitor of the Supreme Court of
Judicature of England and a partner in the firm of
Sinclair, Roche & Temperley of London, attorneys for
A/S Falkefjell and A/S Dovrefjell, defendants in this
action, and I submit this affidavit in support of their
motion to vacate the attachment, to set aside an alleged
maritime lien and to dismiss the Complaint in the captioned
action. I have personal conduct of the proceedings on foot
before a London arbitration tribunal between the Plaintiff
and the Defendants in respect of the matters herein
deposed to.

2. I have read the affidavit of Donald J.
Kennedy sworn herein on the 7th day of January, 1977, and
confirm from my personal knowledge that the contents
thereof so far as they relate to questions of fact are

true and correct.

3. During March, 1976, the defendants ordered the vessel, M.S. Drys, (hereinafter called "the vessel") to load a cargo of grain under the time charter party of August 22, 1972 (hereinafter called "the charter"). On inspection of the vessel prior to commencement of loading, it was noted by independent surveyors that due to the presence of oil, water and heavy rust scale, all the vessel's cargo spaces were unsuitable for the loading of grain in bulk. A dispute then arose between the plaintiff and defendants herein as to responsibility for the cost and time of rendering the vessel's cargo spaces suitable for the grain cargo. As no agreement could be reached between the parties at that time, the defendants, without prejudice to questions of liability, paid the hire for the cleaning period and bore the costs of that cleaning. The time involved was of the order of eight days with hire payments of almost \$25,000, and the cleaning costs amounted to approximately \$100,000. Pending the arbitration, the defendants have not to date sought to recover any part of these sums to themselves by deduction from the charter hire, despite the terms of Clause 54 of the charter. The defendants did, however, indicate their firm intention to recover these costs and, presumably in consequence of that indication, on or about March 26, 1976, the plaintiff appointed one Cedric Barclay of London, S.W. 1, as its arbitrator. In accordance with the British Arbitration Act of 1950, the defendants responded on or about March 31st by appointing one John L. Potter of London, EC3, as

their arbitrator.

4. During June, 1976, a further dispute of a similar nature arose between the parties and during further performance of the charter in the first half of 1976, the defendants received notice of other facts indicating, in my submission, quite clearly that the vessel was not being maintained to the standard necessary to give satisfactory performance of the charter.

5. Matters came to a head towards the end of June, 1976, when the parties agreed to meet in London to discuss what work was necessary to restore the vessel to a condition wherein she could satisfactorily perform under the charter. As a result of these meetings, an agreement was made and signed by duly authorized representatives of both parties on July 2, 1976. A copy of the said agreement is annexed hereto as Exhibit 1.

6. Pursuant to the terms of the July 2nd repair and accounting agreement (hereinafter called "the Agreement"), the vessel performed an Eastbound Transatlantic cargo carrying voyage which was completed in Hamburg on or about July 28th, and in accordance with the terms of the Agreement, the vessel went off-hire and proceeded in ballast to Piraeus, Greece, for repair.

7. The vessel arrived in Piraeus on or about August 8, 1976, and independent surveyors for the plaintiff and defendants thereafter boarded to conduct the off-hire survey required by Clause 3(a) of the Agreement. Their inspection was completed on or about August 11th, but in meetings immediately thereafter, the two surveyors were unable to agree on any items of damage they had found as

being covered by notices given by the plaintiff pursuant to Clause 30 of the charter. In these circumstances, all repairs in the cargo spaces then required by the Owners' Classification Society had to be done in the first instance for the plaintiff's account, although as is clearly provided by Clause 3(f) of the Agreement, without prejudice, of course, to the plaintiff's right to claim reimbursement of the cost and time of repairs and the incidental expenses connected therewith in the arbitration which had already been commenced.

8. Although it is in my submission, clear that the conditions laid down in paragraphs (b) and (c)(i) of Clause 3 of the Agreement for an interim payment from the defendants' had not been met, the plaintiff nevertheless continued to claim hire while the necessary repairs were proceeded. Faced with these demands for hire payments, the defendants instructed me to notify the plaintiff's attorneys that they, the defendants, did not consider that any obligation to pay monthly hire had at that time accrued. Copies of the exchanges in this regard between my firm and the plaintiff's London attorneys of the hire demands and other cognate documents at this time available to me are annexed as Exhibit 2.

9. The Owners' repairs continued in a rather desultory fashion from the latter part of August, 1976, until almost mid-November, when the vessel proceeded, as required by the Agreement, to drydock. After the repair of the bottom damages in drydock, the vessel sailed from Greece in ballast and, in accordance with Clause 5 of the Agreement, came back on hire shortly after leaving the

Mediterranean Sea Westbound for the United States Gulf on or about December 1st. During the period of repair, the vessel inevitably consumed diesel oil bunkers supplied and paid for by the defendants to a value of about \$11,000 and fuel oil bunkers to a value of about \$34,000. There was also an item on the accounts of the charter between the plaintiff and the defendants for hire paid in advance during July, 1976, and not earned of about \$35,000. In these circumstances, no hire fell to be paid by the defendants until December 8th, and the month's hire due on that date was paid after deduction of appropriate parts of the items described above. This hire was accepted by plaintiff. Exhibit 2 above referred to includes further details of these deductions.

10. Further hire fell due on January 8th, and has been fully paid by the defendants.

11. In my submission, the plaintiff's attempted lien on the defendants' subfreights or sub-hires payable by Atlantic & Great Lakes Shipping Corporation is misconceived on two principal grounds as to which I am, as I respectfully submit, competent to depose.

12. In the first place, by Clause 6 of the Agreement, the parties irrevocably bound themselves not only to proceed as a matter of priority with the pending arbitration, but also to cooperate in arranging speedy arbitral hearings for any new matter of dispute as and when they arose. If the plaintiff believes that circumstances have arisen in which amounts of hire due are unpaid, it is and always has been fully open to the plaintiff.

to request an expedited hearing of such an issue before the appointed arbitrators or other London arbitrators. I am authorized by the defendants hereby to affirm their willingness to cooperate in arranging such an expedited hearing if so requested by plaintiff.

13. Secondly, it is my firm belief that no amounts are at this time due to the plaintiff by way of hire, for repair work done between August and November or for the expenses incidental thereto. In my submission, it is an absolutely fundamental point of the Agreement that these three classes of claim are the very matters which are before the appointed arbitrators and which they have to decide in order to determine what, if any, amounts are so due. Pending that determination, there are amounts claimed, but no amounts due under the charter.

14. Before turning from the text of the Agreement, I should stress that Clause 3(e) thereunder expressly links the Charterers' obligation to pay for the cost and time of repairing damage covered by "Clause 30" notices to the plaintiff's right of withdrawal of the vessel from the charter given by Clause 5 of the charter itself. I find it significant that despite the fact that market conditions are currently favorable to the plaintiff, it has not sought to exercise this traditional and powerful right of a shipowner in circumstances where the charter hire has not as it alleges been duly paid. It further seems to me that it is no coincidence that in a telex message sent by the plaintiff's P&I insurers to my firm on January 7, 1977, the exercise of a lien is admitted to be for purposes of

obtaining security for claims made in the arbitration rather than to procure the payments of amounts genuinely considered to be due at this time to the plaintiff. A copy of the said telex is annexed hereto as Exhibit 3 and the said admission is contained in the following sentence thereof:

"in view of the considerable expense incurred by Owners which Charterers decline to acknowledge or contribute to, Owners would not have been safeguarding their own proper interests if they had not obtained security for the large sums which will in due course be awarded to them in arbitration."
(underscoring added)

The Charterers have not declined to acknowledge or contribute to the Owners' considerable expense. They, of course, remain entirely willing to abide by the result of the London arbitration which the plaintiff itself started. I submit that this is not an authorized or valid use of the time charter party lien procedure laid down in Clause 18 of the charter.

15. The London arbitration proceedings have advanced well. A first hearing took place before the arbitrators on September 1, 1976, and during December, 1976, that is when all the facts now in issue were fully within the plaintiff's knowledge, the plaintiff sought full directions from the arbitrators including a request that a date for the final hearing now be appointed. The defendants have replied to this request by confirming to the plaintiff that they are in substantial agreement with the directions sought by the plaintiff from the arbitrators including a direction that a final hearing date be appointed and adhered to. A copy of the letter wherein the plaintiff's attorney sought these directions, a copy of the letter

containing my acknowledgement thereto and of a telex including the defendants' substantial concurrence in the directions sought, are annexed hereto as Exhibit 4.

16. Monthly hire due from the defendants to the plaintiff amounts to \$95,071.65. Hire due under the defendants' current subcharter with Atlantic & Great Lakes Shipping Corporation will amount to \$124,000 less 2.5 percent commissions. From these figures, it will be noted, as already suggested above, that the vessel's current market value is significantly above the head charter rate as between plaintiff and defendants. The differential between the vessel's chartered rate and her current market rate is thus of the order of \$1,000 per day.

17. Finally, it is my submission that on January 6, alternatively January 7, being the time when the plaintiff purported to exercise a lien as the defendants' moneys by issuing and serving process in this matter, the plaintiff had just received full payment of hire due from the defendants. This hire was in fact transferred by the defendants in a sum of \$92,586.77 on January 4.

18. The plaintiff has alleged by the text of Exhibit 3 hereto that the defendants have failed to comment on a number of hire statements and other debit notes. This allegation is in part refuted by the first seven pages of Exhibit 2 hereto. The defendants have now further commented on the debit notes in question by telex

to their attorneys in this action. A copy of the relevant section of this telex, which bears today's date, is annexed hereto as Exhibit 5.

Harvey G. Williams

Sworn to before me this
10th day of January, 1977.

Notary Public

MEMORANDUM OF AGREEMENT"TEYS"

Charterparty dated 22.8.72 ("the Charterparty")

1. Charterers to programme the vessel forthwith to perform one further cargo carrying voyage to Europe, Mediterranean or Japan (or Scandinavia in case of absolute necessity) and the vessel then to drydock and perform necessary maintenance and repairs as hereinafter described in accordance with parties obligations under the terms of the Charterparty.
- 2(a) The repair and maintenance work to be done as aforesaid will (without limitation) include restoration of cargo spaces to class requirements for special survey and restoration of the ballast system and pipe work to class surveyors' requirements.
- (b) For purposes of this Agreement "cargo spaces" means those spaces in which the Charterers have in fact carried cargo since April 1973
3. Repair of stevedores' damages which have occurred during the currency of the Charter shall be carried out and paid for as follows :-
 - (a) A joint off-hire survey shall take place as soon as practicable after the vessel's arrival at the drydocking port for the determination of such stevedore damage as is in existence at the date of the survey. The time and expenses of such joint survey shall be shared equally. The surveyors shall certify whether any stevedores' damage in the cargo spaces has been the subject of a notice under Clause 30 of the Charterparty
 - (b) The repair of such stevedores damage as class require to be made good and is certified to be covered by a notice under Clause 30 shall commence immediately on the vessel's arrival in drydock and shall be carried out with the maximum possible

despatch as far as possible seven days a week, twenty four hours a day (unless the Charterers instruct otherwise) provided always that if the Charterers undertake to order and supervise the work for their own account they may programme the work as they wish. If Owners make good the stevedores' damage to class requirements they shall ensure that in all cases of conflict between labour and/or equipment and/or material requirements for work under this clause and Clause 2, an equitable division of such resources shall be made between these conflicting requirements as agreed between Owners' and Charterers' superintendents during the repair period

- (c)(i) If the time required for the repair of stevedores' damage as aforesaid extends beyond the time of the completion of the work specified in Clause 2 above and any work other than routine maintenance in addition thereto carried out for owners' account, then the vessel shall be considered as on-hire as from that moment until such time as the repairs of the stevedores' damage are completed provided that owners shall have the right to carry out routine maintenance for their account during such time
- (ii) "Routine maintenance" for purposes of this paragraph means such work as could be done by the crew in port during cargo operations without putting the vessel off-hire.
- (d) The cargo spaces shall be rendered free of rust and scale and painted forthwith after the completion of the repair of stevedores' damage in any particular cargo space
- (e) The Charterers will pay to Owners' bank the whole of the direct cost attributable to repairs of the stevedores' damage under Clause 3(b) and hire for any time chargeable to Charterers under Paragraph (c) of this Clause within a

maximum of seven working days from the time that the Owners shall have paid the accounts of the shipyard in respect of such stevedores damage. The provisions of Clause 5 of the Charterparty shall apply to the payments required under this clause.

- (f) The payment by Charterers under Paragraph (e) shall be expressly without prejudice to the Charterers' rights to dispute (either under Charterparty Clause 30 or otherwise howsoever) such account or any on-hire period and their liability to pay for any item shown therein and to claim reimbursements from the Owners of all or any part of the sum so paid and without prejudice to the Owners' right to claim from the Charterers the cost of repairing the balance of the stevedores damage incurred by the vessel during the currency of the Charterparty and the cost of the work carried out under Paragraph (d) hereof.

4. Owners and Charterers agree hereby to settle all Baltimore off-hire disputes in a sum of U.S.\$ 10,000 which Charterers shall be at liberty to deduct from hire due on 8th July.
5. Subject to the provisions of Clause 3(c) the vessel shall be off-hire from the time when she deviates to the drydocking port until she regains the direct course at the same point from the port of discharge on the voyage referred to in Clause 1 to the next port ordered by the Charterers after completion of drydocking.
6. It is the stated and irrevocable intention of both parties hereto to proceed with all arbitrations required hereunder as a matter of urgent priority and the parties agree to co-operate

in seeking directions from their arbitrators and/or by
appointing separate tribunals for isolated matters capable
of speedy determination with a view to resolving any outstanding
disputes well within the validity of this Charterparty.
The terms of this Agreement shall for purposes of the Arbitration
Clause in the Charterparty be deemed to be a part of the Charter.

As witness the hands of the parties this 2nd day of July 1976

for Owners

for Charterers

.....
J. Pipilis

.....
Sinclair, Roche & Temperley
By telephonic authority this day

EXL 2

05
STANDARD LON
16325 NORTH N

NO. 75383 K "DRYS" - ATT. WILLAIMS - 6/10/76

O AND U HAVE RECEIVED FOLLOWING FROM THE OWNERS:

QUOTE

FOLLOWING RECEIVED FROM OWNERS, DATED OCTOBER 5TH 1976

QUOTE

M V DRYs T/C 22.8.72

AIRMAILED TODAY FOLLOWING DEBIT NOTES:

A/ DEBIT NOTE F.1043 COVERING HIRE
FOR TIME USED FOR THE DETERMINA-
TION OF STEVEDORE DAMAGE

DOLL. 56,453-89

B/ DEBIT NOTE F.1050 COVERING HIRE
FROM 17.9. 21.30 HRS TO 8.10
16.30

DOLL. 66,479-04

C/ DEBIT NOTE F.1061 COVERING HIRE
8.10 16.30 HRS TO 8.11 16.30 HRS

TOTAL

DOLL. 95,921-65

TOTAL

DOLL. 218,854-58

OWNERS KINDLY REQUEST CHARTERERS FOR SETTLEMENT AS PER
CHARTER AXXX CHARTER PARTY AND AGREEMENT+
UNQUOTE

WE ARE AWAITING YOUR COMMENTS TO THE ABOVE.

UNQUOTE:

885228 ARBLAW G
SINNORD LDN
TELEX NO. 11235

7/10/76

ATN MR BEARE
DRYS

OUR CLIENTS HAVE COPIED TO US YOUR CLIENTS TLX OF 50CT
REQUESTING PAYMENT OF CERTAIN HIRE IN ACCORDANCE WITH THE
CHARTER-PARTY AND AGREEMENT OF 2.7.76
THE CHARTERERS WILL OF COURSE PAY HIRE IN ACCORDANCE WITH THE
CHARTERPARTY AND AGREEMENT. IN PARTICULAR OWNERS D/N F 1043 WILL
BE EXAMINED ON ITS ARRIVAL.

WE MUST HOWEVER POINT OUT TO YOU THAT WE DO NOT CONSIDER THAT
ANY HIRE IS NOW DUE FOR THE PERIODS REFERRED TO IN D/NS F.1050
AND F.1061. THE FORMER DOES NOT RELATE TO ANY TIME COVERED BY
CL 3(C) OF 2.7.76 AGREEMENT.

AS TO THE LATTER OUR CLIENTS WILL OF COURSE PAY HIRE DULY BY
REFERENCE TO THE DATE WHEN THE VESSEL IS EXPECTED TO BE READY FOR
RESUMPTION OF THE CHARTERED SERVICE. ON YOUR CLIENTS OWN INDICATIONS
HOWEVER THIS TIME WILL NOT BE UNTIL END OCTOBER PLUS DRYDOCKING TIME
WE AWAIT NEWS RE DRYDOCK STEM AS AGREED.

OUR CLIENTS HAVE ALSO BEEN SHOCKED BY THE INORDINATELY DELAYED ETR
GIVEN IN YR TLX OF 29/9.
WITHOUT PREJUDICE TO THEIR RIGHTS. OUR CLIENTS REPEAT THEIR
REQUIREMENT THAT THE VESSEL RETURN TO THE CHARTER AT THE EARLIEST
POSSIBLE TIME.

TIME SENT 15124
885228 ARBLAW G
SINNORD LDN

(X)

Dry

SINORD LDN
885223 ARBLAW G

11/10/76

ATTENTION MR WILLIAMS RE 'DRYS' T/C 22/8/72 AND MOA 2/7/76
THANK YOU FOR YOUR TELEX OF THE 7TH INSTANT. IT IS OUR
CLIENTS CASE THAT THE THREE DEBIT NOTES ARE STRICTLY IN
ACCORDANCE WITH THE MOA AND THE CHARTER PARTY. F1043
IS RAISED UNDER PARAGRAPH 3 (A) OF THE MOA. F1043 IS
RAISED UNDER PARAGRAPH 3 (C) (1) AND F 1061 IS RAISED UNDER
THE SAME PARAGRAPH AND ALSO THE CHARTER PARTY ASSUMING VESSEL
RESUMED SERVICE ON COMPLETION OR REPAIRS BEFORE 8TH
NOVEMBER.

OUR CLIENTS DENY THAT THERE HAS BEEN ANY DELAY ON THEIR
PART. PLEASE WOULD YOU SEND US COPIES OF ALL THE ON AND OFF
HIRE SURVEYS UNDER THE SUB CHARTERS FOR WHICH WE WILL PAY
YOUR PROPER CHARGES

REGARDS WILSON ARBLAW

+++

1640HRS

SINORD LDN
885228 ARBLAW GV

M
885228 ARBLAW G
SINNORD LDN
TELEX NO. 11413

11/10/76

ATTN: MR WILSON

DRYS

TKS TLX 11/10 SUBCHTR ON/OFF SURVEYS ARE IN MAIL TODAY
OUR CLIENTS DO NOT DISPUTE THAT D/R 1043 IS DESIGNED TO RELATE TO
TIME UNDER CL5A.
THEY HAVE MERLY SAID THEY NEED SOME TIME TO EXAMINE IT.

AS TO THE OTHER DEBIT NOTES OUR CLIENTS DO NOT ACCEPT THAT ANY
STEVEDORED DAMAGE OF THE KIND ENVISAGED BY CL 5(C)(1) HAS
OCCURRED.

IF THE VSL IS EXPECTED TO BE BACK IN SERVICE BEFORE 3 NOV. NO ETR
TO THIS EFFECT HAS BEEN GIVEN, NOR ANY DRYDOCKING STEM.
HOWEVER IF THIS RESUMPTION IS EXPECTED THEN, SUBJECT TO ACCURED AND
OTHER RIGHTS UNDER C/P CL54 WE WILL OF COURSE TAKE OUR CLIENTS
INSTRUCTIONS AND MAKE APPROPRIATED RECOMMENDATIONS TO THEM.

REGARDS WILLIAMS/SR AND T

TIME SENT 1728
885228 ARBLAW G
SINNORD LDN

(X)

85228 ARBLAW G
SINNORD LON

4

TELEX NO 12004 21/10/76

ATTN MR WILSON

DRYS

1. WE HAVE OUR CLIENTS INSTRUCTIONS ON YOUR CLIENTS DEBIT NOTES NOS F1043 F1050 F1051
2. OUR CLIENTS DO NOT ACCEPT HAVING REGARD TO C/P CLAUSE 54 AND THE TERMS OF THE 2.7.76 AGREEMENT THAT ANY HIRE IS NOW DUE TO YOUR CLIENTS.WM
3. OUR CLIENTS WILL PAY THEIR PROPER PROPORTION OF THE SURVEY TIME UNDER CL 3A OF THE AGREEMENT WITH THE NEXT H E PAYMENT. FOR YOUR GUIDANCE WE THINK THIS FIGURE IS TO BE ASSESSED BY REFERENCE TO THE ELAPSED TIME BETWEEN PHYSICAL COMMENCEMENT AND COMPLETION OF THE SURVEY ON BOARD BY THE TWO SURVEYORS APPOINTED UNDER CLAUSE 3A. WE INVITE YOUR CLIENTS TO SUBMIT A NEW DEBIT NOTE CALCULATED ON THIS BASIS.
4. EVEN IF THE VSL WERE REDELIVERED IN ACCORDANCE WITH THE AGREEMENT ON 25/10 NO PAYMENT WOULD BE DUE FOR THIS MONTH AS OWNERS WILL RECOGNISE THAT
AA) BUNKERS CONSUMED WHILST OFF HIRE
BB) ADJUSTMENT OF OFFHIRE TIME 28/7 TO 8/8 FOR WHICH HIRE PAID IN ADVANCE AND NOT EARNED MUST NOW BE TAKEN INTO ACCOUNT.
5. PLEASE REVERT SOONEST WITH ETR AFTER REPAIRS AND INDICATIONS. RE DRYDOCK STEM TO ENABLE OUR CLIENTS TO CONTINUE PROGRAMMING OF VSL FOR HER NEXT CARGO COMMITMENT.

REGARDS
WILLIAMS

TIME SENT 1059

CORRECTION PARA 3 LINE 3 FIRST TWO WORDS SHOULD READ HIRE PAYMENT

885228 ARBLAW G
SINNORD LON

MUTUALITY LDN
SINNORD LDN

2

TELEX NO 12373

5/11/76

YREF 3/MWH

ATTN MR MARK HAMSHER

DRYS

AS YOU WILL BE AWARE HIRE SO FAR AS ANY IS DUE UNDER THE TERMS OF THE CHARTER FALLS DUE ON 8 NOV. WE NOW ADVISE YOU FOR THE AVOIDANCE OF DOUBT THAT NO HIRE WILL BE PAID IN RESPECT OF THE PERIOD 8 NOV/8 DEC SINCE, HAVING REGARD TO THE TERMS OF CLAUSE 54 AND TO MATTERS REFERRED TO IN PARA 4 OF OUR TLX NO 12005 OF 21.10.76 TO RB.

YOU WILL NOTE ON REREADING THAT TLX THAT SINCE THAT TLX WAS PREPARED THE VESSELS ETR HAS FALLEN BACK FROM 25/10 TO 20/11

THIS APART WE WILL COMMENT ON YOUR MSG OF 1234 TODAY IN DUE TIME

REGARDS WILLIAMS

TIME SENT 1635

MUTUALITY LDN
SINNORD LDN

SINNORD LDN
MUTUALITY LDN

ATTENTION MR HARVEY WILLIAMS SINNORD LONDON
CC MR WILSON RICHARDS BUTLER
CC TO MR JOHN PIPILIS L C LEMOS LONDON

"DRYS" T/C 22/8/72
OUR REF 3/CWHG/MWH/D75/3

THANKS YOUR TELEX 5/11/76 OWNERS REJECT CHARTERERS UNILATERAL
DECLARATION THAT NO HIRE DUE ON 8TH NOVEMBER. OWNERS
RESERVE ALL THEIR RIGHTS.

OWNERS HEREBY GIVE CHARTERERS NOTICE THAT THEY INTEND
TO CARRY OUT JOINT ON-HIRE SURVEY PRIOR TO DELIVERY UNDER
THE CHARTER. THE AIM OF SUCH SURVEY WILL BE TO DETERMINE
PRESENT CONDITION OF HOLDS AS WELL AS IDENTIFYING
IN DETAIL ANY STEVEDORE OR OTHER DAMAGE WHICH MAY NOT
HAVE BEEN REPAIRED AS NOT EFFECTING CLASS. THE BOTTOM WILL
ALSO BE SURVEYED. CHARTERERS ARE INVITED TO NOMINATE THEIR
SURVEYOR AND COORDINATE TIMING OF SURVEY WITH OWNERS

OWNERS REQUEST DETAILS OF

1. BUNKERING INSTRUCTIONS
2. SAILING INSTRUCTIONS

REGARDS

MUTUALITY LDN +++

SENT 10 NOV 76 1722
SINNORD LDNO

13TH

OF JOINT HIRE SVY ITS UP TO OUR
JOINT OFFHIRE SVY. WILL DISCUSS

E. 2

Telegrams: Ugelstad
 Telephones: 56 24 70
 Telex: Oslo 11151 Oandz



**A/S OLSEN
 & UGELSTAD
 SHIPS**

Your ref. 75388 K "Drys"
 Our ref. HB

Nordic Shipowners' Defence Club,
 Kristinelundveien 22,
 Oslo 2.

Attention: Mr. Knut Lie.

A/S DOVREFJELL
 A/S FALKEFJELL
 A/S LUKSEFJELL
 A/S RUDOLF

P.O. BOX 3057 EL.
 (Fr. Stangsgt. 22)
 OSLO 2, October 8th, 1976.

Dear Sirs,

M/S "DRYS" - c/p 22/8/72.

Referring to telephone conversation with your Mr. Lie October 7th
 we hereby give you breakdown of hire as follows:

Estimated completion
 drydocking 25/10.

Hire due: 25/10 16:40 - 8/11 16:40 = 14 days.

$\$ 2.55 \times 37.253 \text{ tdw.} \times 14 \text{ days}$	= \$ 42.935,58
31	

Overtime:		
$\$ 850,- \times 14 \text{ days}$	= \$ 383,87	
31		
		\$ 43.319,45

Less:

Adjustment for hire remitted for the period
 8/7 16:40 - 8/8 16:40.

Total remitted	\$ 95.921,65
----------------	--------------

Hire due 8/8 16:40 - 25/7 10:00
 (vessel off hire dropping pilot
 Hamburg) 19 days 17 hours 20 min.

$\$ 2.55 \times 37.283 \text{ tdw.} \times 19.72222$	\$ 60.484,65
31	

Overtime:		
$\$ 850,- \times 19.72222 \text{ days}$	\$ 540,77	\$ 39.896,23
31		

Hire due:..... \$ 8.423,22

Yours faithfully,

for A/S Olsen & Ugelstad

cc: Messrs. Sinclair, Roche & Temperley
 Att.: Mr. H. Williams

Telegrams: Ugelstadco
 Telephones: 56 24 90
 Telex: Oslo 11151 Oandu



**A/S OLSEN
 & UGELSTAD
 HELSHIPS**

Your ref. 75388 K "DRYS"

Our ref. HB/JB

Nordic Shipowners' Defence Club,
 Kristinelundveien 22,
 Oslo 2.

Attention: Mr. Knut Lie.

A/S DOVREFJELL
 A/S FALKEFJELL
 A/S LUKSEFJELL
 A/S RUDOLF

P.O. BOX 3057 EL.
 (Fr. Stangsgt. 22)
 OSLO 2, October 13th, 1976.

Dear Sirs,

M/S "DRYS" - c/p 22/8/72.

Enclosed you will find copies of various letters together with statements from the Owners, which enclosures are selfexplanatory.

We are awaiting your instructions regarding the enclosures.

Yours faithfully,

for A/S Olsen & Ugelstad

Lars Bergeland.

Encl.

✓ cc: Messrs. Sinclair, Roche & Temperley,
 Attention: Mr. H. H. Williams

A/S HJALMAR BJØRGE

SHIPBROKERS

KRONPRINSESSE MARTHAS PL. 1
P.O. B. 1362 - VIKEN - OSLO 1
TELEX: 16 400 HEADL N
TELEGRAMS: HEADLIGHT

TELEPHONES:

OFFICE..... 33 16 80
AFTER OFFICE HOURS:
H. L. GERNER 56 25 74
E. MØLLER 24 72 01
A. ARNESEN 86 91 38
E. D. ANKER 13 12 98
J. H. ÅRSTAD 91 19 58
H.C. KINGE ANDERSEN... 44 31 64
A. E. GOGSTAD 56 31 23

DRY CARGO CHARTERING

A/S Olsen & Ugelstad

OSLO

*Wathne /
Lauritzen*

OSLO, 11th Oct. 1976

M/V "DRYS" - C/P 22/8-1972

Vedlagt oversendes L.C. Lemos's tre brev datert 28. og 30. september og 4. oktober, samt diverse bilag, mottatt fra Eggar, Forrester Ltd., med deres brev datert 8. ds.

Med vennlig hilsen
for A/S HJALMAR BJØRGE

Ann E. Gogstad
Ann E. Gogstad

AEG/ihs
encl.

L. C. LEMOS CO. LTD.,

SHIPBROKERS

TELEGRAMS
FOREIGN: ELCILEMOS LONDON W1
INLAND: ELCILEMOS LONDON TELEX

REGISTERED IN ENGLAND NO 054457

DIRECTORS
CAPT P. C. LEMOS (USA)
G. P. LEMOS (USA)
G. A. LEMOS (GREEK)
S. P. PATITSAS (CANADIAN)
J. L. DIMLIZ (GREEK)

TELEPHONE: 01-590 4386 (LONDON)
INT. TELEX: 268019

REGISTERED OFFICE:

*8, Rathbone Place,
London, W1P 1DE*

Your ref

Our ref END/WM/55/17/6/76

Messrs

Eggar Forrester Ltd

Rodwell House

Middlesex Street

London E17 7LJ

4th, October 1976

Dear Sirs,

N.Y. "DRYS" T/C 22.8.72

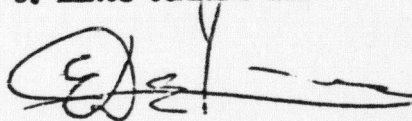
We have pleasure in enclosing herewith our debit Note F 1061 in the amount of \$ 95,921-65 in respect of hire and Overtime from 8.10 16.30 hrs to 8.11 16.30 hrs which we kindly request you to forward to Charterers for their attention and settlement in accordance with the terms of the Charter Party.

Kindly acknowledge receipt.

Thanking you,

Yours Faithfully

For L. C. LEMOS COMPANY LTD



As Agents only

L.C. LEMOS CO. LTD.

A/S Dorrefjell & Falkesjell
 Olsen & Ugelstad Managers Oslo
 per Eggar Forrester Ltd
 Rodwell House
 Middlesex Street
 London E17HJ

8, Rathbone Place,
 London, W1P 1DE

tel. 01-580 4386
 (4 lines)

telex 268019

DEBIT NOTE

No. F 1061

Ref 17/6/76

Date 4.10.76

m.v. "DORIS" T/C 22.3.72

Hire: From 8.10 16.30 hrs to 8.11 16.30 hrs at
 \$ 2.55 per tdw of 37283 tdw per calendar
 month

\$ 95,071 65

Overtime: For the above period

\$ 850 00

Total \$ 95,921 65

F.A.O.F.

L. C. LEMOS CO. LTD.

SHIPBROKERS

TELEGRAMS
 FOREIGN ELCELEMOB. LONDON W1
 INLAND ELCELEMOB. LONDON. TELEX

REGISTERED IN ENGLAND NO 984437

Your ref

Our ref LND/LGN/55/17/6/76

TELEPHONE: 01-580 4386 (4 Lines)
 INT. TELEX: 268019

DIRECTORS

CAPT. P. C. LEMOS (USA)
 D. P. LEMOS (USA)
 S. A. LEMOS (USA)
 R. P. PATIDAR (CANADA)
 J. L. PIRILIA (SWEDEN)

REGISTERED OFFICE

8, Rathbone Place,
 London, W1P 1DE

Messrs

Eggar Forrester Ltd

Rodwell House

Middlessex Street

London E17 7EJ

30th, September 1976

Dear Sirs,

M.V. "DHYM" T/C 22.8.76

We have pleasure in enclosing herewith our debit Note F 1050 in the amount of \$ 66,479-04 in respect of hire period 17.9 21.30 hrs to 8.10 16.30 hrs which we kindly request you to forward to Charterers for their attention and settlement in accordance with Charter Party and Agreement.

Kindly acknowledge receipt.

Thanking you,

Yours Faithfully

For L. C. LEMOS COMPANY LTD



As Agents only

L. O. LEMOS CO. LTD.

A/S Dovrefjell & Follafjell
Olson & Ugelstad Managers Oslo

per Eggar Forrester Ltd
Redwell House
Middlesex Street
London E17 7LJ

8, Rathbone Place,
London, W1P 1DE

tel. 01-580 4386
(4 lines)

telex 268019

No. F 1050

Ref 17/6/76

Date 30.9.76

m.v. "DMS" T/C 22.8.72

Hire: From 17.9 21.30 hrs to 8.10 16.30 hrs
or 20 D 19 H at \$ 2.55 per tdw of 57285
tdw per calendar month

\$ 65,889 94

Overtime: For the above period

\$ 589 10

As per attached cable advise from the Owners

Total \$ 66,479 04

E.&O.E.

212374 PLEO 02
26X07NPH
ELCILEMOS LON
212374 PLEO 02

12.3.75

14.05 HRS

PLS PASS FOLLOWING TO CHARTERERS

NOTE

W/M 120751

T/C 22-3.72

THIS IS TO KINDLY ADVISE YOU THAT WORK AS PER
AGREEMENT DATED 2.7.75 HAVE BEEN COMPLETED BY 14.30 HRS
OF 10TH EXCEPT FOR STEVEDORE DAMAGES.
GAS FREEING OF DOUBLE BOTTOM TANKS HAS BEEN
AND COMPLETED EXCEPT FOR HOPPER TANK NO 4 IN WHICH ALL FUEL
FROM OTHER TANKS HAS TRANSFERRED (THIS TANK WILL BE GAS FREED
AS SOON AS ANY OF THE DOUBLE BOTTOM TANKS IS READY TO RECEIVE THE
FUEL EXISTING ON BOARD)

UNQUOTE

PLEASE ALSO CONVEY THIS MESSAGE TO OUR CLERK FOR THE ATTENTION
OF MR. HANSEN.

TAM:1

BEST COPY AVAILABLE

ELCILEMOS LON
WELL RECEIVED PLEASE INFORM HANSEN

ELCILEMOS LON
212374 PLEO 02
14.07-232.5

RECD

L. C. LEMOS CO. LTD.

SHIPBROKERS

TELEPHONE: 01 580 4388 (LINES)
INT. TELE: 268019

REGISTERED OFFICE

*8, Rathbone Place,
London, W1P 1DE*

DIRECTORS
CAPT P. C. LEMOS (USA)
G. P. LEMOS (USA)
G. A. LEMOS (USA)
S. P. PATIPAS (Greece)
J. L. PIPILIA (Greece)

TELEGRAMS
FORN LEMOS LONDON W1
INLAND LEMOS LONDON TELE

ALTERNATE
REGISTERED IN ENGLAND NO. 06457
15 BY

Yours
As Agents only
C. L. LEMOS CO. LTD. 15/10/76

8 OCT 1976

Messrs

Eggar Forrester Ltd

Rodwell House

Middlesex Street

London E17LJ

28th, September 1976

Dear Sirs,

M.V. "DAYS" T/C 22.8.76

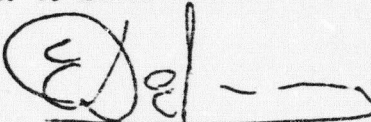
We have pleasure in enclosing herewith our debit Note F 1947 in the amount of \$ 56,453-89 in respect of hire concern Charterers during the determination of Stevedore damages period, which we kindly request you to forward to Charterers for settlement in accordance with Charter Party and Agreement.

Kindly acknowledge receipt.

Thanking you,

Yours Faithfully

For L. C. LEMOS COMPANY LTD



As Agents only

DEK'S SHIPPING CORPORATION

L.C. LEMOS CO. LTD.

DEBIT NOTE

A/S Dovrefjell & Falkefjell
Olsen & Ugelstad Managers Oslo
per Eggar Forrester Ltd
Rodwell House
Middlesex Street
London E17LW

8, Rathbone Place,
London, W1P 1DE

tel. 01-580 4386
(4 lines)

telex 268019

No. F 1043

Ref 17/5/76

Date 28.9.76

m.v. "DEKS" T/C 22.8.72

Hire: From 9.9 08.00 hrs to 14.9 15.00 hrs or
36 D 7 Hr or
$$\frac{30 D \ 8 H \ 30 M \times 95,071-65^*}{31 D} = \text{£ } 93,090-99$$

$$\frac{5 D \ 22 H \ 30 M \times 95,071-65^*}{30 D} = \text{£ } 18,816-26$$

* (95,071-65 = 37283 taw at £ 2,55 per calendar month)

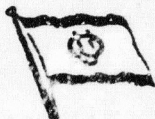
Overtime: For the above period at £ 850 per
calendar month $\text{£ } 1,000-52$
Total $\text{£ } 112,997-77$

50 % thereof as above period concerns Time used for the
determination of Stevedore Damages Sustained to the vessel
during the currency of this Charter.

£ 56,453 89

Total £ 56,453 89

Telegrams: Ugelstadco
Telephones: 56 24 90
Telex: Oslo 11151 Oandu



Your ref. 75388 K "DRYS"
Our ref. HB/JB

Nordic Shipowners' Defence Club,
Kristinelundveien 22,
Oslo 2.

Attention: Mr. Knut Lie.

Copy for Sinclair Roche & Temperley
**A/S OLSEN
& UGELSTAD
HELLSHIPS**

A/S DOVREFJELL
A/S FALKEFJELL
A/S LUKSEFJELL
A/S RUDOLF

P.O. BOX 3057 EL.
(Fr. Stangsgt. 22)
OSLO 2, 19.oktober 1976.

Dear Sirs,

M/S "DRYS" - c/p 22/8/72.

Referring to meeting with your Mr. Lie in our office October 18th
we hereby give you revised breakdown of hire as follows:

Estimated completion
drydocking 25/10.

Hire due: 25/10 16:40 - 8/11 16:40 = 14 days.

\$ 2.55 x 37.283 tdw. x 14 days	= \$ 42.935,58
31	

Overtime:	
\$ 850,- x 14 days	= \$ 383,87
31	
	<u>\$ 43.319,45</u>

Less:

Adjustment for hire remitted for the period
8/7 16:40 - 8/8 16:40.

Total remitted \$ 95.921,65

Hire due 8/7 16:40 - 28/7 10:00
(vessel off hire dropping pilot
Hamburg) 19 days 17 hours 20 min.

\$ 2.55 x 37.283 tdw. x 19.72222	\$ 60.484,65
31	

Overtime:

\$ 850,- x 19.72222 days	\$ 540,77	\$ 34.896,23
31		
Hire due.....		<u>\$ 8.423,22</u>

cont.

Estimated bunkers during off hire:

10 days steaming at 40 tons
at price dlrs. 86,69 per ton

\$ 34.676,00

Diesel on board the ship when she went
off hire was 90 tons. This quantity surely
must be used during steaming time and
during repairs.

90 tons at \$ 127,51 per ton

\$ 11.475,90

\$ 46.151,90

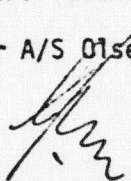
Less hire due

\$ 8.423,22

\$ 37.728,68

Yours faithfully,

for A/S Olsen & Ugelstad



cc: Messrs. Sinclair, Roche & Temperley, ✓
Att.: Mr. H. Williams

Ek 3

93a

SINNORD LDN
885271 MUTUAL G

V

TO SINCLAIRE ROCHE LONDON
FOR MR WILLIAMS

CC EFPLOIA PIRAEUS
FOR MR PIPILIS
RICHARDS BUTLER (FOR MR WILSON /REID)

DRYS

THANKS YR TLX

WE NOTE YOUR FORMAL PROTEST. AS YOU ARE AWARE CLAUSE 18 C/P SPECIFICALLY GRANTS OWNERS A LIEN UPON ALL CARGOES AND ALL SUB-FREIGHTS FOR ANY AMOUNTS DUE UNDER THE CHARTER. THE AMOUNTS LISTED BELOW ARE ALL OWING UNDER THE CHARTER AND FOR THE REASONS SET OUT BELOW WE REJECT THE ALLEGATION THAT OWNERS HAVE ACTED IN ANY WAY IMPROPERLY.

- THE FOLLOWING AMOUNTS ARE AT PRESENT OWING UNDER THE CHARTER USDLRS 400,186.75 DUE FOR HIRE BUNKERS ETC AS PER OWNERS INVOICE DATED 23 DEC. 1976 AND SUMMARISING DEBIT NOTES DATING FROM BETWEEN 10.7.75 TO 4.12.76-
- USDLRS 373,500.00 DUE FOR COST OF REPAIR OF STEVEDORE DAMAGE USDLRS 25,000.00 DUE FOR SOME INDIRECT EXPENSES SUCH AS BERTHING DUES, ATTENDANCE EXPENSES, LLOYDS FEES ETC THIS FIGURE IS NOT YET FINALISED.

OWNERS HAVE NEVER RECEIVED REPLIES TO OR ACKNOWLEDGEMENT OF THEIR LETTERS AND DEBIT NOTES OF 11.7.76, 4.10.76, 21.11.76, 4.12.76 OR 23.12.76. IN VIEW OF THE CONSIDERABLE EXPENSE INCURRED BY OWNERS WHICH CHARTERERS DECLINE TO ACKNOWLEDGE OR CONTRIBUTE TO OWNERS WOULD NOT HAVE BEEN SAFEGUARDING THEIR OWN PROPER INTERESTS IF THEY HAD NOT OBTAINED SECURITY FOR THE LARGE SUMS WHICH WILL IN DUE COURSE BE AWARDED TO THEM IN ARBITRATION.

WE ARE PLEASED TO NOTE YOUR COMMENTS ON THE TERMS OF AN ORDER FOR DIRECTIONS. THOSE COMMENTS AND THE DESIRE OF BOTH PARTIES TO PROCEED TO ARBITRATION AS SPEEDILY AS POSSIBLE DO NOT EFFECT THE VALIDITY OF THE ABOVE PARAGRAPH.

- WE DO DISPUTE THAT YOUR PROPOSED APPLICATION TO THE ARBITRATORS IS FULLY SANCTIONED BY PARA 6 OF THE AGREEMENT OF 2.7.76. THE NEED FOR OWNERS TO OBTAIN SECURITY IS QUITE DISTINCT TO THEIR AGREEMENT AND THEIR CONTINUING WILLINGNESS TO PROCEED TO ARBITRATION AS A MATTER OF URGENT PRIORITY. IF CHARTERERS CONTINUE TO WISH TO MAKE AN APPLICATION TO THE ARBITRATORS WOULD YOU PLEASE DISCUSS THE MATTER WITH MR WILSON (WHO IS AT PRESENT HALF WAY ACROSS THE ATLANTIC) ON THE MORNING OF 10 JANUARY
-

REGARDS HAMSHER

MUTUALITY LDN

SENT+ 7.1.77 JJ 1534
SINNORD LDN
885271 MUTUAL G

RICHARDS, BUTLER & CO.

B. H. BIRD	B. L. GIBSON	G. J. BOWTIE
C. T. BARKER	D. H. PULLIN	J. M. AYLMER
C. W. P. GUNBY	J. V. BROWN	H. B. EDWARDS
W. A. WILSON	T. J. ANCHER	O. A. BENTON
E. G. ZIMMER	A. L. G. TREN	S. T. BAYEN
E. J. HARRIS	D. FRANCIS	J. H. H. HORS
H. J. PARKER-DE VIK	J. H. H. HORS	D. G. WATTS
D. L. MORGAN	S. P. H. SEWELL	
J. BARNETT		
H. L. GOLDFORMAN		
E. E. TOWNER		
S. H. BEARE		
R. H. FLETCHER		

CONSULTANTS
 PHILIP RANDALL
 H. S. TRENBATH V. P. ROBINSON

5-17, CLIFTON STREET

LONDON.

EC2A 4DQ

Telegrams ARSELAW, LONDON, E.C.2.

Telephone 01-247 6555

Telex 885228

Our Reference

WAW/IT/TRMD/675

Your Reference

17th December 1976.

Dear Sir,

"DRYS"

You and Mr. Potter are the arbitrators in this case. Mr. Williams of Messrs. Sinclair Roche acts for the charterers. We are sending a copy of this letter to Mr. Potter and to Mr. Williams.

In November we wrote to Mr. Williams as follows :-

"The time is fast approaching when the repairs will be completed and the vessel will return to service. When that happens the Owners will be able to put the finishing touches to their claims and we will all become obliged to play our respective parts in implementing Clause 6 of the Agreement of the 2nd July.

To this end it would be useful if we could work out now a timetable for the arbitration and hopefully we can agree this between ourselves and then ask the arbitrators to make an Order accordingly without the need for a hearing.

The most likely initial delay will be in finalising the claim and so I would suggest six weeks for the Points of Claim, then four weeks for your Defence and Counterclaim, if any, then four weeks for my reply and Defence for Counterclaim, if any. After that, three weeks for lists of documents and three weeks for discovery with an interval of about a month to a hearing date. When we are able to write jointly to the arbitrators, I would like to include a request that they reserve the earliest date consistent with the foregoing timetable for a hearing which I think would last about a working week."

Mr. Williams replied that he thought that our proposal was premature seeing that the vessel had not then returned to service. The vessel returned to service earlier this month and accordingly we wrote again to Mr. Williams repeating the proposals set out above. We asked Mr. Williams to let us have a reply by the beginning of this week and said that in default we would apply to the arbitrators for an Order in accordance with our proposals.

We have had no response from Mr. Williams and accordingly we write this letter as a request to the arbitrators to make an Order for Directions including the fixing of a Hearing date. If you wish to hear Mr. Williams and ourselves on such an application we would be most happy to attend at the time and place of your nomination.

Yours faithfully,

C. Barclay, Esq.,
139 Sloane Street
LONDON SW1X 9AY.

c.c. Mark Hamsher, Esq.
Mr. Pipilis.

Potter, Esq.,
Fenchurch Street,
London, E.C.3.

HGW/JZ

22nd December 1976

Dear Sir,

"DELS"

We have received a copy of Richards Butler's letter of 17th December to your co-arbitrator and confirm the receipt of the two letters to which they refer.

We regret the fact that we have not replied to the second letter due to the fact that we were awaiting instructions from our clients in Norway and for the final report from the surveyors who viewed the vessel at the completion of her repairs in Greece.

We are still not in a position to deal fully with adverse solicitors' suggestions but we hope we will be so placed early in the New Year. We would respectfully suggest that no time will be lost if the tribunal defers the making of an Order until that time, since if the respective solicitors cannot then agree on directions naturally the tribunal will be justified in taking into account the intervening period in setting a time limits for service of Points of Claim.

Yours faithfully,

c.c. Messrs. Richards Butler & Co.
Ref : WAW/IT/TEND/675
c.c. Cedric Barclay Esq.

885272 MUTUAL G
SINNORD LDN

TELEX NO 202 7/1/77

FOR MR HAMSHER - T R MILLERS LDN

C.C. RICHARDS BUTLER - LDN

DRYS

WE HAVE BEEN INFORMED BY OUR CLIENTS THAT YOUR MEMBERS HAVE ATTEMPTED TO LIEN THE HIRE DUE UNDER THE SUBCHARTER.

IN OUR VIEW YOUR MEMBERS HAVE NO GROUNDS WHATSOEVER FOR THIS ACTION AND WE NOW FORMALLY PROTEST AND HEREBY RESERVE ALL OUR CLIENTS RIGHTS TO CLAIM DAMAGES FOR THIS IMPROPER INTERFERENCE WITH THE SUBCHARTER.

WE WOULD BE GRATEFUL FOR A CLEAR INDICATION FROM YOU IF POSSIBLE BEFORE NEW YORK OPENS TODAY AS TO WHAT AMOUNTS YOUR MEMBERS ASSERT TO BE DUE TO THEM UNDER THE CHARTER JUSTIFYING THE EXERCISE OF A LIEN.

WE ARE NOW IN A POSITION TO DISCUSS WITH YOUR SOLICITORS THE TERMS OF AN ORDER FOR DIRECTIONS FOR PROGRESSING THE ARBITRATION. OUR PROPOSALS WILL BE LARGELY IN LINE WITH OWNERS PROPOSALS AS SET OUT IN MR WILSONS LETTER OF 12 NOVEMBER.

WE MUST ALSO GIVE YOU NOTICE THAT UNLESS YOUR CLIENTS CAN JUSTIFY THEIR ATTEMPTED LIEN TO US OR DROP IT WE SHALL APPLY FORMALLY ON 10TH JANUARY TO THE TRIBUNAL FOR AN IMMEDIATE DATE FOR A SHORT HEARING AT WHICH WE SHALL SEEK AN INTERIM AWARD DECLARING YOUR MEMBERS LIEN IMPROPER. THIS PROCEDURE IS FULLY SANCTIONED BY PARA 6 OF 2.7.76 AGREEMENT, AS WE IMAGINE YOU WILL NOT DISPUTE.

THIS ACTION IN LONDON WILL BE TAKEN IN CONJUNCTION WITH ANY NECESSARY ACTION IN NEW YORK OR ELSEWHERE IF THE LIEN IS NOT RELEASED.

REGARDS
HGW / SINCLAIRS

TIME SENT 1110

CORRECTION PLSE READ LINE
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

CORRECTION PSE READ ... AS WE IMAGINE YOU WILL NOT DISPUTE

885272 MUTUAL G
SINNORD LDN

WELL RECEIVED PLSE ???OK TKS

2. COMMENTS TO TEL 7/1/77 FROM MILLERS: 3- CAS.

98a

WITH REFERENCE TO HIS PARAGRAPH 2 WE WILL COMMENT FIRSTLY ON US DLRS 400.186.75. THIS BREAKS DOWN AS FOLLOWS:

DEBIT NOTE F 718 DATED 10/7/75 US DLRS 6.526.29. THIS REFERS TO THE STEVEDORE DAMAGE OCCURED IN ROTTERDAM IN MAY OF 1975. WE HAVE VERBALLY AGREED THAT THIS IS STEVEDORE DAMAGE FOR OUR ACCOUNT, BUT IT HAS BEEN HELD BACK IN VIEW OF THE SUBSTANTIAL AMOUNTS PAID ALREADY TO THE OWNERS RELATING TO PROBLEMS IN PHILADELPHIA AND HOUSTON IN RESPECT OF SANDBLASTING OF CARGO HOLDS.

DEBIT NOTE F 965 DATED 20/6/76 US DLRS 95.921.65. THIS REPRESENTS HIRE FOR THE PERIOD FROM 8/7 UNTILL 8/8 AND WAS FULLY PAID FROM HERE IN THE FOLLOWING MANNER: JULY 6 WE PAID HIRE DLRS 95.921.65 LESS DLRS 10.000 ACCORDING MEMORANDUM OF AGREEMENT DATED JULY 2, 1976 REPRESENTING OFF-HIRE IN BALTIMORE, AS AGREED WITH MR. PIPPILIS DURING THE JULY MEETING IN LONDON.

DEBIT NOTE F 1043 DATED 23/9/76 US DLRS 56.453.89, REPRESENTING 50 PER CENT OF SURVEY TIME WITH REFERENCE TO AGREEMENT OF JULY 2. IN OUR OPINION THE SURVEY TIME WAS DRAGGED OUT BY THE OWNER TO HAVE AS MUCH OF HIS OWN WORK DONE ON TIME THAT SHOULD BE SHARED EQUALLY BETWEEN THE PARTIES. THE MATTER IS IN DISPUTE AND WILL BE TAKEN UP IN THE ARBITRATION.

DEBIT NOTE F 1050 DATED 30/9/76 US DLRS 66.479.04, REPRESENTING HIRE FROM 17/9 UNTILL 8/10 PLUS OVERTIME. THE VESSEL IS CONSIDERED OFF-HIRE BY US UNTILL BROUGHT BACK INTO SIMILAR POSITION AS BEFORE SHE WENT OFF-HIRE ACCORDING TO AGREEMENT. THIS AMOUNT IS WELL WITHIN THE TIME AS CONSIDERED BY US BEING OFF-HIRE AND IS CONSEQUENTLY NOT PAID.

DEBIT NOTE F 1061 DATED 4/10/76 US DLRS 95.921.65, REPRESENTING HIRE FROM 8/10 UNTILL 8/11. COMMENTS AS PER ABOVE.

DEBIT NOTE F 1069 DATED 21/10/76 US DLRS 95.921.65, REPRESENTING HIRE FROM 8/11 UNTILL 9/12. EVEN THOUGH THE VESSEL WAS EXPECTED TO BE ON HIRE PRIOR TO THIS PERIOD'S EXPIRATION WE DID NOT PAY ANYTHING BECAUSE AMOUNTS PREVIOUSLY OVERPAID IN JULY WAS

~~DEBIT NOTE F-1082 DATED 21/10/76 US DLRS 95.921.65, REPRESENTING~~
HIRE FROM 8/11 UNTILL 8/12. EVEN THOUGH THE VESSEL WAS EXPECTED
TO BE ON HIRE PRIOR TO THIS PERIOD'S EXPIRATION WE DID NOT
PAY ANYTHING BECAUSE AMOUNTS PREVIOUSLY OVERPAID IN JULY WAS
CONSIDERED TO COVER THE ON-HIRE PORTION OF THIS PERIOD. ON
THE 7 DECEMBER WE PAID AN AMOUNT OF DLRS 95.921.65 LESS OFF-HIRE
AND BUNKERS CONSUMED AT SIDNEY, DLRS 7.390.77 LESS ESTIMATED
BUNKERS CONSUMED DURING OFF-HIRE AND REPAIR PERIOD ACCORDING
CLAUSE 54 IN CHARTER PARTY. FUEL DLRS 26.007.00, DIESEL DLRS
12.751.00, NET TRANSFER DLRS 49.772.38, REPRESENTING HIRE FROM
8/12 UNTILL 8/1/77.

DEBIT NOTE F 1080 DATED 21/11/76 US DLRS 95.921.65, REPRESENTING
HIRE FROM 8/12 UNTILL 8/1/77 PLUS OVERTIME. SEE COMMENTS
PREVIOUS PARAGRAPH.

DEBIT NOTE F 1088 DATED 4/12/76 US DLRS 21.951.22. ALLEDGINGLY
REPRESENTING REPAIRING OF SOUNDING AND AIR PIPES DAMAGED BY
STEVEDORES, THE AMOUNT OF COURSE BEING IN DISPUTE AND SUBJECT
TO ARBITRATION.

DEBIT NOTE F 1089 DATED 4/12/76 US DLRS 20.010.34, REPRESENTING
GAS FREEING OF DOUBLE BOTTOM AND HOPPER TANKS IN ORDER TO
MAKE REPAIRING OF STEVEDORE DAMAGE POSSIBLE. WE DISPUTE THE
BASIS FOR US HAVING TO PAY THIS AMOUNT. IT IS SUBJECT TO
ARBITRATION. WITHOUT COMMENTING FURTHER ON THIS WE MIGHT LIKE
TO MENTION THAT THIS AMOUNT MOST CERTAINLY ALSO INCLUDES THE
CLEANING UP OF TANKS WHERE IT SHOULD NOT HAVE BEEN OIL AT ALL
(REGULAR BALLAST TANKS).

DEBIT NOTE F 1090 DATED 4/12/76 US DLRS 22.632.79, REPRESENTING
GAS FREEING OF DOUBLE BOTTOM AND HOPPER TANKS. OUR COMMENTS
ARE SIMILAR TO THOSE ABOVE, HOWEVER, THE TWO INVOICES REPRESENT
JOBS DONE BY TWO DIFFERENT FIRMST.

THESE INVOICES REPRESENT AN AGGREGATED AMOUNT OF US DLRS
579.740.67. FROM THIS THE OWNERS HAVE DEDUCTED REMITTANCES
FROM US ON 7/7/76 US DLRS 85.921.65 AS MENTIONED ABOVE (UNDER
DEBIT NOTE F 1055), AND ON 8/12/76 US DLRS 49.772.38 AS ALSO
COMMENTED ABOVE (UNDER DEBIT NOTE F 1069), AND FINALLY CREDIT

~~NOTE NO F 1082 US DLRS 95.921.65 REPRESENTING OWNERS CALCULATION~~

~~THESE INVOICES PRESENT AN AGGREGATED AM. NT OF US DLRS~~
579,740.67. FROM THIS THE OWNERS HAVE DEDUCTED REMITTANCES
FROM US ON 7/7/76 US DLRS 85,921.65 AS MENTIONED ABOVE (UNDER
DEBIT NOTE F 965), AND ON 8/12/76 US DLRS 49,772.83 AS ALSO
COMMENTED ABOVE (UNDER DEBIT NOTE F 1069), AND FINALLY CREDIT
NOTE NO F 133 US DLRS 43,359.39, REPRESENTING OWNERS CALCULATION
OF OFF-HIRE DURING REPAIR PERIOD, DEVIATION, BUNKERS CONSUMED
DURING DEVIATION AND OFF-HIRE PERIOD. THIS IS NOT IN ACCORDANCE
WITH AGREEMENT OF JULY 2, 1976 OR THE CHARTERPARTY. IT IS
SOMEWHAT COMPLICATED TO EXPLAIN IN DETAIL THE COMPUTATION OF
THE CREDIT NOTE, HOWEVER, CONTRARY TO OUR INTERPRETATION OF
OFF-HIRE, THE OWNER IS CALCULATING OFF-HIRE FROM HAMBURG UNTILL
ARRIVAL PIRAEUS PLUS SAILING TIME FROM PIRAEUS TO SYROS FOR DRY-
DOCKING PLUS OWNERS ADJUSTMENT OF OFF-HIRE AS PER PARAGRAPH 1,
THAT IS THE DIFFERENCE IN DISTANCE BETWEEN HAMBURG AND PORT
KAMSAR AND SYROS TO PORT KAMSAR. HE IS ALSO INCLUDING IN THE
CREDIT NOTE THE 10,000 DLRS TO COVER ALL OFF-HIRE DISPUTES AT
BALTIMORE IN JUNE/JULY. THIS AMOUNT HAS BEEN COMMENTED ON ABOVE.

AFTER HAVING CREDITED THESE AMOUNTS WE ARE DOWN TO US DLRS
400,186.75 NET.

WITH REFERENCE TO US DLRS 373,500 WE CANNOT GIVE ANY SPECIFIC
COMMENTS TO THIS AMOUNT INASMUCH AS WE HAVE YET NOT RECEIVED
THIS INVOICE. LOOKING AT SOME OF THESE INVLCES WE HAVE ALREADY
RECIEVED, INDICATES, AS WE HAVE PREVIOUSLY DISCUSSED, THAT
THESE ARE VERY MUCH HIGHER THAN WHAT WE NORMALLY WOULD CONSIDER
FOR SIMILAR JOBS. THE TIME INVOLVED, AS YOU KNOW, IS MUCH LONGER
THAN WE WOULD NORMALLY CONSIDER FOR THIS KIND OF WORK. THE
PLACE WHERE THE WORK WAS CARRIED OUT IS NOT EQUIPPED AT ALL TO
DO SUCH WORK. THIS HAS OF COURSE LEAD TO THE LONG TIME AND
HIGH COST.

US DLRS 25,000 , THESE INVOICES HAVE NOT BEEN RECEIVED AND WE
HAVE NO FURTHER COMMENTS.

THE LETTERS AND DEBIT NOTES OF 11/7/76, 4/10/76, 21/11/76,
4/12/76, 23/12/76 REFERRED TO, RELATE TO DEBIT NOTES AS COMMENTED
ON ABOVE. WE HAVE FROM THIS OFFICE NEITHER ACKNOWLEDGED NOR
REPLIED TO THESE, BUT THEY HAVE ALL BEEN PASSED ON TO OUR LAWYERS
(AS YOU KNOW) WHO HAVE SUBSTANTIALLY REPLIED TO THESE THROUGH

ON ABOVE. WE HAVE FROM THIS OFFICE NEITHER ACKNOWLEDGED NOR ^{101a}
REPLIED TO THESE, BUT THEY HAVE ALL BEEN PASSED ON TO OUR LAWYERS
(AS YOU KNOW), WHO HAVE SUBSTANTIALLY REPLIED TO THESE THROUGH
THE OWNERS' LAWYERS.

WE LIKE TO MENTION THAT WE HAVE PAID HIRE IN AN AMOUNT OF DLRS
95,921.65 LESS DISBURSEMENTS DLRS 3,334.83, NET TRANSFERRED
DLRS 92,586.77, TRANSFER MADE ON JANUARY 4, COVERING HIRE
8/1-8/2/77.

AS YOU RECALL WE PAID SUBSTANTIAL BILLS BOTH IN PHILADELPHIA
AND HOUSTON FOR SANDBLASTING WHEN VESSEL WAS TURNED DOWN FOR
GRAIN LOADING DUE TO RUST IN CARGO HOLDS IN PHILADELPHIA IN
FEBRUARY 76 AND HOUSTON IN APRIL 76, PLUS OFF-HIRE DURING SAND-
BLASTING/RUST REMOVAL PERIOD AND LOST BUNKERS FROM HAMBURG TO
PHILADELPHIA. THE AGGREGATE AMOUNT OF THESE ITEMS SHOULD BE
APPROX DLRS 222,000.61, BROKEN DOWN AS FOLLOWS:

SANDBLASTING/RUST REMOVAL PHILADELPHIA	DLRS 105,000.00
" " " " HOUSTON	DLRS 10,500.00

HIRE PAID FOR OFF-HIRE PERIODS IN PHILADELPHIA,
HOUSTON, LISBON AND RIO DE JANEIRO:

23 DAYS 17 HOURS 0 MIN

37.233 DWT X DLRS 2.55 X 23.70323 DAYS

30

DLRS 75,132.00

OVERTIME:

DLRS 850 X 23.70323 DAYS

30

DLRS 671.74

BUNKERS CONSUMED DURING THIS OFF-HIRE PERIOD:

2 TONS X 23.70323 DAYS X DLRS 110.00

DLRS 5,215.37

LOST BUNKERS ON ACCT OF LEAKAGE DURING VOYAGE

DLRS 25.430.CO

DLRS 222.COO.61

RE OUR COUNTER CLAIM WE LIKE TO MENTION THAT BECAUSE OF THE VERY
SHORT TIME WE HAVE HAD LOOKING THROUGH THIS YOU MUST OF COURSE TREAT
THESE FIGURES AS BEING VERY ROUGH.

FINALLY WE WOULD LIKE TO ADD UP A FEW OF THE PROBLEMS WE HAVE HAD AFTER THE SHIP CAME INTO SERVICE AGAIN. APPARENTLY THE VESSEL HAS ABT 200 TONS LESS BUNKERS THAN SHE SHOULD HAVE HAD ACCORDING TO OUR FIGURES. WHERE THIS IS WE DONT KNOW BUT WE HAD TO BRING THE VESSEL TO KINGSTON FOR BUNKERING IN ORDER TO REACH THE GULF, IN SPITE OF THE FACT THAT THE MASTER ORIGINALLY TOLD US THAT HE HAD SUFFICIENT BUNKERS TO REACH THE GULF VIA ST. CROIX.

AT HER LAST STAY IN THE MISSISSIPPI RIVER THE VESSEL SPILLED OIL IN THE WATER. THIS IS ACCORDING TO OUR SUPERCARGO CAUSED BY THE FACT THAT THE SHIP IS STILL CARRYING A MIXTURE OF OIL AND WATER IN HER BALLAST TANKS/PIPES. AFTER HAVING HAD TELEPHONE CALLS WITH OUR SUPERCARGO WE ARE LEFT WITH THE IMPRESSION THAT THE VESSELS PERFORMANCE FROM HERE ON SEEMS TO BE MORE COMPLICATED THAN IT HAS BEEN IN THE PAST.

AS REQUESTED ON THE PHONE LAST NIGHT BROKERS/DE FIGURE MARKET RATE FOR SAY 12 MONTHS T/C IS AROUND DLRS 3.40/3.50.

WE HOPE THAT THIS IS SUFFICIENT AND THAT IT WILL GIVE YOU THE NECESSARY AMMUNITION. WE ARE OF COURSE REACHABLE IN OSLO IF YOU NEED US, AT THE FOLLOWING TELEPHONE NUMBERS:

OFFICE: 56.24.90 (0330 - 1545 NORM. TIME)
44.58.27 (1545 - 1700 - BERGSLAND)

AFTER OFFICE HOURS:

RUNE LAURITSEN: 11.91.90.69

SPITE OF THE FACT THAT THE MASTER ORIGINALLY TOLD US THAT HE HAD 103a
SUFFICIENT BUNKERS TO REACH THE GULF VIA ST. CROIX.

AT HER LAST STAY IN THE MISSISSIPPI RIVER THE VESSEL SPILLED OIL IN
THE WATER. THIS IS ACCORDING TO OUR SUPERCARGO CAUSED BY THE FACT
THAT THE SHIP IS STILL CARRYING A MIXTURE OF OIL AND WATER IN HER
BALLAST TANKS/PIPES. AFTER HAVING HAD TELEPHONE CALLS WITH OUR
SUPERCARGO WE ARE LEFT WITH THE IMPRESSION THAT THE VESSELS PERFOR-
MANCE FROM HERE ON SEEMS TO BE MORE COMPLICATED THAN IT HAS BEEN IN
THE PAST.

AS REQUESTED ON THE PHONE LAST NIGHT BROKERS/WE FIGURE MARKET RATE
FOR SAY 12 MONTHS T/C IS AROUND DLRS 3.40/3.50.

WE HOPE THAT THIS IS SUFFICIENT AND THAT IT WILL GIVE YOU THE
NECESSARY AMMUNITION. WE ARE OF COURSE REACHABLE IN OSLO IF YOU
NEED US, AT THE FOLLOWING TELEPHONE NUMBERS:

OFFICE: 56.24.90 (0330 - 1545 NORM. TIME)
44.53.27 (1545 - 1700 - BERGSLAND)

AFTER OFFICE HOURS:

RUNE LAURITSEN: 91.90.69
HANS BERGSLAND: 14.53.38
RUDOLF UGELSTAD: 24.62.66

REGARDS

A/S OLSEN AND UGELSTAD
RUDOLF UGELSTAD

☎

222974 HGRH UR

11151A OANDU N

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of
the M.S. DRYs,

and

A/S FALKEFJELL and A/S
DOVREFJELL,

Defendants.
-----X

77 Civil 73 (GLG)

: AFFIDAVIT IN OPPOSITION TO
: DEFENDANTS' MOTION TO VACATE
: ARREST AND ATTACHMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID A. NOURSE, being duly sworn, deposes and says:

1. I am an attorney at law and a member of the firm of Kirlin, Campbell & Keating, attorneys for plaintiff Drys Shipping Corporation, and submit this affidavit in opposition to defendants motion, brought on by order to show cause, to vacate the attachment, to set aside plaintiff's maritime lien and to dismiss the complaint in the captioned action.

2. On January 6, 1977 plaintiff filed a verified complaint in admiralty in this Court seeking arrest of sub-freights in the hands of sub-charterers of M.S. DRYs and foreign attachment of all funds, debts, credits, effects and choses in action of defendants A/S FALKEFJELL and A/S DOVREFJELL, time charterers of M.S. DRYs, in the hands of the sub-charterers and three New York banks. A copy of the complaint is annexed hereto as Exhibit A.

3. On January 7, 1977 a warrant for arrest and a summons to show cause why intangible property should not be paid into Court was issued with respect to the sub-freights and process

of maritime attachment and garnishment was issued with respect to all funds, debts, credits, effects and choses in action of the defendants in the hands of the sub-charterers and three New York banks. Copies of the warrant for arrest, summons to show cause and process for maritime attachment and garnishment are annexed hereto collectively as Exhibit B.

4. On January 7, 1977 a garnishee's answer was served by attorneys for the sub-charterers in response to the process of maritime attachment indicating that at the time of service of process, the sub-charterers owed defendants' managing agents the sum of \$58,500. Copy of the garnishee's answer is annexed hereto as Exhibit C.

5. As indicated in the verified complaint herein, plaintiff is owner of the M.S. DRYS and defendants are time charterers of the vessel under time charter party dated August 22, 1972. Clause 18 of the charter party gave plaintiff a maritime lien on all cargoes and all sub-freights "for any amounts due under this Charter".

6. As a result of defendants' use of M.S. DRYS in carrying various cargoes substantial damage was done to the vessel by stevedores and others for whom defendants are responsible. Since the damage was so severe as to affect the classification of the vessel, plaintiff and defendants entered into an agreement dated July 2, 1976 providing for repair of the damage. A copy of the Memorandum of Agreement dated July 2, 1976 is annexed hereto as Exhibit D.

7. Clause 3C of the Memorandum of Agreement provided that if the time required for repair of the stevedore damage to the vessel extended beyond the time of completion of other work for plaintiff's account as vessel owner, "then the vessel shall be considered as on hire as from that moment until such time as the repairs of the stevedores' damage are completed.***"

8. Pursuant to the Memorandum of Agreement, the vessel sailed to Piraeus where it was surveyed and repaired. The repair of the stevedore damage required for classification purposes, for which defendants were responsible under the Memorandum of Agreement, substantially delayed the vessel beyond the period of time required for other repair work and plaintiff issued various debit notes to defendants for hire for this period of time. The total amount of hire and bunkers involved for this period amounts to \$400,186.75. In addition, \$373,500 for the cost of repair of these stevedore damages and \$25,000 for related expenses have been claimed by plaintiff against defendants. A statement of these amounts is contained in a telex sent by plaintiff's agents to defendants' London solicitors, Sinclair, Roche & Temperley, on January 7, 1977, annexed hereto as Exhibit E-1. This telex was in reply to a telex from the solicitors to plaintiff's agents of the same date, annexed hereto as Exhibit E-2.

9. Plaintiff has demanded arbitration with defendants in London and has complied with all of its obligations with respect to that arbitration. I am advised that there have not been any evidentiary hearings before the arbitrators and that such preliminaries as settling a procedure and time table for the arbitration, preparing points of claim and counter-claim, etc. have not been completed. Further, I am advised that the third arbitrator, Mr. Cedric Barclay, is not expected to be free for a hearing of evidence in this case before nearly the end of 1977 due to his commitments in other arbitrations.

10. Defendants' failure to comply with their obligations under the Memorandum of Agreement dated July 2, 1976 and to pay the substantial amounts due under the charter party indicate to plaintiff that defendants may be experiencing financial

difficulties which may prevent plaintiff from enforcing its claim against defendants in London arbitration. Further, plaintiff understands that defendants have heavily mortgaged other assets and have experienced substantial cash flow problems. This information is confirmed in part by the allegations in paragraph 7 of Mr. Kennedy's affidavit in support of the motion herein.

11. Plaintiff, in bringing this action in rem against the sub-freights of M.S. DRYs and seeking maritime attachment and garnishment of funds of defendants in the hands of sub-charterers and others is merely seeking security for the eventual award of London arbitrators in accordance with the usual procedures of maritime law. Plaintiff does not seek to avoid arbitration but seeks merely to ensure that London arbitration with defendants is not a meaningless exercise.

12. I respectfully submit that plaintiff is entitled to exercise its maritime lien on sub-freights and to exercise its provisional remedy of maritime attachment and garnishment for amounts due under the charter party in the total amount of \$798,686.75, and that defendants' motion should be denied in all respects.

Amel H. Zaman

Sworn to before me this
10th day of January 1977.

George E. Dalton
Notary Public

GEORGE DALTON
Notary Public, State of New York
No. 31-4015202, City of New York, County of
Term Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

1-12-77
ME MP
COMPLAINT IN ADMIRALTY

77 Civ 73
(GLG)

Plaintiff, by its attorneys, Kirlin, Campbell & Keating,
for its Complaint herein, alleges on information and belief,
as follows:

FIRST CLAIM FOR RELIEF

FIRST: This is a case of admiralty and maritime jurisdiction within the meaning of Rule 9(b) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

SECOND: At all material times, Plaintiff was and is a corporation organized and existing under and by virtue of the laws of a sovereign nation other than the United States of America with an office and place of business in Piraeus, Greece and owned and operated the M.S. DRYs (hereinafter called the "Vessel").

THIRD: On information and belief the Freights, Sub-Freights, Charter Hire and/or Sub-Charter Hire of the Vessel are now, or during the pendency of this action will be, within this District Court and within the jurisdiction of this Honorable Court.

FOURTH: At all material times, Defendants A/S Falkefjell and A/S Dovrefjell were and are corporations or other business entities organized and existing under and by virtue of the laws of a sovereign nation other than the United States of America with offices and places of business in Oslo, Norway.

FIFTH: On or about August 22, 1972 Plaintiff, as owner of the Vessel, and Defendants, as charterers, entered into a contract of time charter party (hereinafter called the "Charter") in writing, a copy of which will be produced at the trial. The Charter provided that Plaintiff was to let and Defendants were to hire M.S. DRYS for a term of five years, forty five days more or less in Defendants' option, for worldwide trading.

SIXTH: Clause 8 of the Charter provided, in pertinent part, as follows:

"8. *** Charterers are to load, stow, trim and discharge the cargo at their expense under the supervision of the Captain ***"

Clause 18 of the Charter provided, in pertinent part, as follows:

"18. That the Owners shall have a lien upon all cargoes and all sub-freights for any amounts due under this Charter, including General Average contributions ***"

SEVENTH: On or about April 8, 1973 the Vessel duly entered on the performance of the Charter and thereafter, pursuant to the terms of the Charter, carried various cargoes for Defendants' account and pursuant to Defendants' orders and is still performing pursuant to the Charter.

EIGHTH: On various occasions while the Vessel was performing pursuant to the Charter and Defendants' orders, Defendants and their servants and others for whom Defendants are responsible wrongfully and negligently caused physical damage

and injury to the cargo holds of the Vessel in the course of loading and discharging cargoes which were carried by the Vessel, all in breach of Defendants' obligations under the Charter.

NINTH: As a result of the wrongful and negligent damage and injury to the Vessel, Plaintiff has sustained loss of hire and damages in the amount of \$798,686.75, as nearly as can be estimated at present, which is due from Defendants to Plaintiff pursuant to the terms of the Charter, no part of which has been paid to Plaintiff by Defendants, although duly demanded.

TENTH: Plaintiff and its servants, the master and officers of the Vessel have duly performed all the terms and conditions of the Charter on their part to be performed.

ELEVENTH: On or about December 20, 1976 Defendants, by their managing agents A/S Olsen & Ugelstad of Oslo, Norway, sub-chartered the Vessel to Atlantic & Great Lakes Steamship Corporation of New York ("Atlantic & Great Lakes") for a time charter trip from the U.S. Gulf and Jamaica to the United Kingdom or the Bordeaux-Hamburg range pursuant to the terms and conditions of a written contract of sub-time charter party (the "Sub Charter").

TWELFTH: The Vessel has commenced performance of the Sub Charter and freights, sub-freights, charter hire and/or sub-charter hire are currently due and payable by Atlantic & Great Lakes to Defendants or to A/S Olsen & Ugelstad as managing agents for Defendants pursuant to the terms of the Sub Charter.

THIRTEENTH: Plaintiff duly notified Atlantic & Great Lakes on January 5, 1977 that it was exercising its lien on freights, sub-freights, charter hire and/or sub charter hire under Clause 18 of the Charter for amounts due Plaintiff under the Charter.

FOURTEENTH: By reason of the premises Plaintiff demands that the freights, sub-freights, charter hire and/or sub-charter hire due from Atlantic & Great Lakes to Defendants or to Defendants' managing agents, A/S Olsen & Ugelstad, up to and

and including \$798,686.75 be proceeded against by this Court in rem for the benefit of Plaintiff.

SECOND CLAIM FOR RELIEF

FIFTEENTH: Plaintiff repeats and realleges each and every allegation contained in paragraphs First through Twelfth of this Complaint with the same force and effect as if again fully set forth herein.

SIXTEENTH: By reason of the premises Plaintiff has been damaged in the sum of \$798,686.75, together with interest, as nearly as the same can now be estimated, no part of which has been paid, although duly demanded. Plaintiff reserves the right to amend this Complaint as and when more information becomes available.

WHEREFORE Plaintiff prays that:

1. A warrant for the arrest of the freights, sub-freights, charter hire and/or sub charter hire of M.S. DRYs in the hands of Atlantic & Great Lakes Steamship Corporation, 76 Beaver Street, New York, New York may issue pursuant to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims, F.R.C.P. and that a summons to show cause issue thereon.

2. Process for Maritime Attachment and Garnishment providing for the attachment of goods, chattels, credits or effects of the Defendants may issue pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims, F.R.C.P. in the amount of \$798,686.75, the sum sued for with interest, costs and disbursements, if Defendants cannot be found within the District, to wit: all funds, debts, credits, effects and choses in action in the hands of

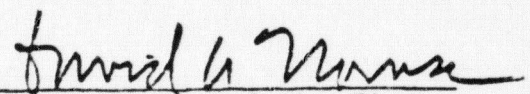
- (a) Citibank, N.A., 399 Park Avenue, New York, account of Fjell Navigation Inc.
- (b) First Empire Bank, New York, 654 Madison Avenue, New York, New York 10022, account of A/S Olsen & Ugelstad No.130-8509.
- (c) M. & T. Bank, 654 Madison Avenue, New York, New York, account of A/S Olsen & Ugelstad.
- (d) Atlantic & Great Lakes Steamship Corp., 76 Beaver Street, New York, New York for account of A/S Olsen & Ugelstad.

3. Judgment be entered in favor of Plaintiff against the Freights, Sub-Freights, Charter Hire and/or Sub Charter Hire of the M.S. DRYS in rem and against Defendants A/S Falkefjell and A/S Dovrefjell for the amount sued for, together with interest, costs and disbursements.

4. Plaintiff have such other, further and different relief as may be just and proper.

Dated: New York, New York
January 6, 1977

KIRLIN, CAMPBELL & KEATING
Attorneys for Plaintiff

BY: 
A Member of the Firm
Office & P. O. Address
120 Broadway
New York, New York 10005
(212) 732-5520

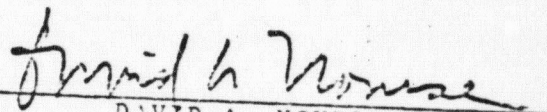
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID A. NOURSE, being duly sworn, deposes and says:

I am an attorney of law and a member of the firm of
Kirlin, Campbell & Keating, attorneys for the Plaintiff.

I have read the foregoing Complaint and know the
contents thereof and the same is true to the best of my knowledge,
information and belief.

The reason that this verification is made by me and
not by the Plaintiff is that the Plaintiff is a foreign
corporation and is not within this District.


DAVID A. NOURSE

Sworn to before me this
6 day of January 1977.

Notary Public

NICHOLAS J. MARCANTONIO
Notary Public, State of New York
No. 1244777
Office: 110 New York Center
Commission Expires March 30, 1979

FORM NO.1

WARRANT FOR ARREST IN ACTION IN REM

77 CV 73 GLC

UNITED STATES OF AMERICA)
SOUTHERN DISTRICT OF NEW YORK) ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Marshal of the Southern District of New York - GREETING:

WHEREAS a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January in the year of our Lord one thousand nine hundred and seventy seven by

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter Hire and/or
Sub-Charter Hire of the M.S. DRYs

and

Defendant,

A/S FALKEFJELL and A/S DOVREFJELL,

upon an admiralty and maritime claim for \$798,686.75

for the reasons and causes in said complaint mentioned and praying for process of warrant for the arrest of said vessel and other property and that all persons interested in the said vessel and other property may be cited in general and special to answer the premises; and all proceedings being had, that the said vessel and other property may for the causes in the said complaint mentioned be condemned and sold to pay the demands of the plaintiff,

You are therefore hereby commanded to attach the said vessel and other property and to detain the same in your custody until the further order of the Court respecting the same and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of said complaint, that they must file their claims with the clerk of this Court within 10 days after the execution of this process or within such additional time as may be allowed by the Court, and must serve their answers within 20 days after the filing of their claims, and that you promptly after execution of this process file the same in this Court with your return thereon.

David H. Weinstein

Chief Judge

7th day of January, 1977, in the year of our Lord one
and of our Independence the one hundred and first year.

RAYMOND F. BURGHARDT

Clerk

Kirlin, Campbell & Keating
120 Broadway
New York, New York 10005
(212) 732-5520

Attorney for Plaintiff

By: _____

Deputy Clerk

NOTE: Claimant is required to file claim in the Clerk's office and to answer or except to said complaint within the times above fixed; otherwise the Plaintiff may enter an Interlocutory or Final Judgment as may be proper.

This Warrant is issued pursuant to Rule C(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

SUMMONS TO SHOW CAUSE WHY INTANGIBLE PROPERTY SHOULD
NOT BE PAID INTO COURT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

77 CIV 73 GLG

-----X
DRYS SHIPPING CORPORATION,

Plaintiff,

against
Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

-----X
TO ATLANTIC & GREAT LAKES STEAMSHIP CORPORATION
and To all persons having control of the freight, sub-freights,
charter hire and/or sub-charter hire of the M.S. DRYs
, or control of the proceeds of the sale of said
vessel or control of the proceeds of the sale of any property appurtenant
thereto or control of any other intangible property appurtenant thereto

You are hereby summoned to show cause before this Court in
Room 2703 of the Court House thereof, Foley Square, Borough of
Manhattan, City of New York, before Judge G.L. Goettel
on the 31 st day of January, 1977 at 10 AM o'clock
why said property under your control should not be paid into court to
abide the judgment.

The service of this summons upon you brings said property
within the control of the court.

Service of this summons is ineffective unless made in time
to give notice of the required appearance of ten days or such shorter
period as the court may fix by making and signing the form of order
provided below.

RAYMOND F. BURGHARDT

Clerk

Date: New York, NY 01-07-77

by

R. Swartz
Deputy Clerk

Good cause for shortening the ten day period prescribed by
Rule 2 of this Court for Admiralty and Maritime Claims having been
shown by the annexed affidavit of verified
the period of notice of the appearance
required by the foregoing summons is hereby fixed as days.

Date:

U.S.D.J.

NOTE: This summons is issued pursuant to Rule C(3) of the Supplemental
Rules for Certain Admiralty and Maritime Claims of the Federal
Rules of Civil Procedure.

BEST COPY AVAILABLE

PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

77 CIV 73 - GLO

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the MARSHAL of the SOUTHERN DISTRICT OF NEW YORK GREETING

WHEREAS, a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January, 1977, by

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter Hire and/or Sub-Charter Hire of the M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

in a certain action for loss of hire and damages for breach of charter therein alleged to be due and owing the said Plaintiff amounting to \$ 798,686.75 and praying for process of maritime attachment and garnishment against the said Defendant, and

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer, together with answers to any interrogatories served with the complaint, within 20 days after service of process upon him and requires that defendant shall serve his answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee

NOW, THEREFORE, we do hereby command you that if the said Defendants cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach credits and effects to the amount sued for, in the hands of:

Atlantic & Great Lakes Steamship Corp.
76 Beaver Street
New York, New York
Account of A/S Olsen & Ugelstad

to wit:

all funds, debts, credits, effects and choses in action of A/S Falkefjell and A/S Dovrefjell and that you promptly after execution of this process file the same in this Court with your return thereon.

WITNESS, the HONORABLE David M. Edelstein Judge of said Court, this 7th day of January, 1977, and of our Independence the ~~one hundred and~~ two-hundred and first year

RAYMOND F. EUGENHART
Clerk

Attorney for Plaintiff
Kirlin, Campbell & Keating
120 Broadway
New York, New York 10005

By

Deputy Clerk

Note: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

63

THE PRESIDENT OF THE UNITED STATES OF AMERICA

77 CIV 73 CV

To the MARSHAL of the SOUTHERN DISTRICT OF NEW YORK GREETING

WHEREAS, a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January, 19 77, by

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter Hire and/or Sub-Charter Hire of the M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

in a certain action for loss of hire and damages for breach of charter therein alleged to be due and owing the said Plaintiff amounting to \$798,686.75 and praying for process of maritime attachment and garnishment against the said Defendant, and

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer, together with answer to any interrogatories served with the complaint, within 20 days after service of process upon him and requires that defendant shall serve his answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee

NOW, THEREFORE, we do hereby command you that if the said Defendants cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach credits and effects to the amount sued for, in the hands of:

First Empire Bank, New York
654 Madison Avenue
New York, New York

Account of A/S Olsen & Ugelstad No. 130-8509

to wit:

all funds, debts, credits, effects and choses in action of A/S Falkefjell and A/S Dovrefjell and that you promptly after execution of this process file the same in this Court with your return thereon.

WITNESS, the HONORABLE David H. Edelstein, Chief Judge of said Court, this 7th day of January, 1977, and of our Independence the ~~two hundred and~~ two hundred and first year

RAYMOND F. LUKWANT

Clerk

Attorney for Plaintiff
Kirlin, Campbell & Keating
One Twenty Broadway
New York, New York 10005
(212) 713-8820

By

Deputy Clerk

NOTES: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

77 CIV 73 GLT

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the MARSHAL of the SOUTHERN DISTRICT OF NEW YORK GREETING

WHEREAS, a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January, 1977, by

DRYS SHIPPING CORPORATION,

Plaintiff,

against
Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYs

and
A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

in a certain action for loss of hire and damages for breach of charter therein alleged to be due and owing the said Plaintiff amounting to \$798,686.75 and praying for process of maritime attachment and garnishment against the said Defendant, and

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer, together with answer to any interrogatories served with the complaint, within 20 days after service of process upon him and requires that defendant shall serve his answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee

NOW, THEREFORE, we do hereby command you that if the said Defendants cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach credits and effects to the amount sued for, in the hands of:

Citibank, N.A.

399 Park Avenue

New York, New York

Account of Fjell Navigation Inc.

to wit:

all funds, debts, credits, effects and choses in action of
A/S Falkefjell and A/S Dovrefjell

and that you promptly after execution of this process file the same in this Court with your return thereon.

WITNESS, the HONORABLE WILLIAM H. SCHULZ Chief Judge of said Court, this 7th day of January, 1977, and of our Independence the one hundred and ninety seventh day of January and first year.

WILLIAM H. SCHULZ

Clerk

Attorney for Plaintiff

Kirlin, Campbell & Keating

120 Broadway

New York, New York 10005 (212) 732-5520

By

Deputy Clerk

Note: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

77 CIV 73 CLG

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the MARSHAL of the SOUTHERN DISTRICT OF NEW YORK GREETING

WHEREAS, a complaint has been filed in the United States District Court for the Southern District of New York on the 6th day of January, 19 77, by

DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of
the M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL,

Defendants.

in a certain action for loss of hire and damages for breach of charter therein alleged to be due and owing the said Plaintiff amounting to \$ 798,686.75 and praying for process of maritime attachment and garnishment against the said Defendant, and

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee shall serve his answer, together with answers to any interrogatories served with the complaint, within 20 days after service of process upon him and requires that defendant shall serve his answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee

NOW, THEREFORE, we do hereby command you that if the said Defendants cannot be found within the District you attach goods and chattels to the amount sued for; and if such property cannot be found that you attach credits and effects to the amount sued for, in the hands of:

M. & T. Bank
654 Madison Avenue
New York, New York

Account of A/S Olsen & Ugelstad

to wit:

all funds, debts, credits, effects and choses in action of
A/S Falkefjell and A/S Dovrefjell

and that you promptly after execution of this process file the same in this Court with your return thereon.

WITNESS, the HONORABLE David M. Edelstein, Chief Judge of said Court, this 7th day of January, 1977, and of our Independence the one hundred and nineteenth two-hundred and first year.

RAYMOND F. BURMAN

Clerk

Attorney for Plaintiff

Kirlin, Campbell & Keating
120 Broadway
New York, New York 10005

By

Deputy Clerk

Note: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

1-GEN-REB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
DRYS SHIPPING CORPORATION,

Plaintiff,

-against-

Freights, Sub-Freights, Charter Hire
and/or Sub-Charter Hire of the M.S. DRYs

and

A/S FALKEFJELL and A/S DOVREFJELL

Defendants.
-----X

77 Civ. 73 (GLG)

GARNISHEE'S ANSWER

The Answer of Atlantic & Great Lakes Steamship Corporation,
Garnishee, to the process of Maritime Attachment and Garnishment herein,
alleges as follows:

FIRST: This Garnishee, Atlantic & Great Lakes Steamship Corporation, at the time of the service of process in this suit upon it, owed A.S. Olsen & Ugelstad, Oslo, as time chartered owner of the M.S. DRYs, the sum of \$53,500.00 constituting an advance payment of 15 days charter hire due under a certain contract between Garnishee and A.S. Olsen & Ugelstad, dated December 20, 1966. This sum is calculated as 15 days hire at \$4,000.00 per day, less a commission of 2-1/2% deductible as per charter party.

SECOND: A further payment of hire will become payable on or about January 21, 1977, also at the rate of \$4,000.00 per day for a number of days which cannot now be accurately estimated.

THIRD: Except as alleged in paragraphs FIRST and SECOND

NF
1/16
3868
DRYS

herein this Garnishee did not hold any other debits, credits, effects, monies or other assets of or belonging to the defendants herein or A/S Olsen & Ugelstad, nor is this Garnishee indebted in any way to the said defendant or A/S Olsen & Ugelstad.

WHEREFORE, this Garnishee prays that an order be entered directing the disposition of the aforesaid monies and dismissing it from all other further proceedings herein and that costs and expenses incurred may be decreed to it.

DONOVAN, MALOOF, WALSH & KENNEDY
Attorneys for Garnishee
Atlantic & Great Lakes Steamship Corp.

BY: /s/ Richard E. Repetto
Richard E. Repetto
A Member of the Firm

Office & P.O. Box
161 William Street
New York, New York 10038
(212) 964-3553

TO:

Clerk of the Court
United States District Courthouse
Foley Square
New York, New York

Kirlln, Campbell & Keating
Attorneys for Plaintiff
120 Broadway
New York, New York 10005

Haight, Gardner, Poor & Havens
One State Street Plaza
New York, New York 10004
Attorneys for Defendants

STATE OF NEW YORK)
) SS.:
 COUNTY OF NEW YORK)

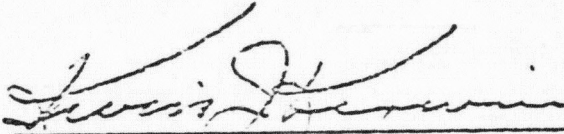
KEVIN J. KERWIN, being duly sworn deposes and says:

I am the Operations Manager of Atlantic & Great Lakes Steamship Corporation, the Garnishee named in the foregoing answer.

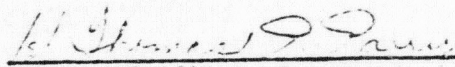
I have read the foregoing answer and know the contents thereof and it is true to the best of my knowledge, based on information and belief.

The source of my information and the grounds for my belief are documents, records and information in the files of the Garnishee.

The reason this verification is made by me and not by the Garnishee is that it is a corporation.


 KEVIN J. KERWIN

Sworn to before me this
 9th day of January, 1977.


 Notary Public

THOMAS P. PAPRY
 Notary Public, State of New York
 No. 24-4396299
 Qualified in Kings County
 Comm. Exp. Expires March 30, 1977

MEMORANDUM OF AGREEMENT"TUYA"

Charterparty dated 22.9.72 ("the Charterparty")

1. Charterers to programme the vessel forthwith to perform one further cargo carrying voyage to Europe, Mediterranean or Japan (or Scandinavia in case of absolute necessity) and the vessel then to drydock and perform necessary maintenance and repairs as hereinafter described in accordance with parties obligations under the terms of the Charterparty.
- 2(a) The repair and maintenance work to be done as aforesaid will (without limitation) include restoration of cargo spaces to class requirements for special survey and restoration of the ballast system and pipe work to class surveyors' requirements
- (b) For purposes of this Agreement "cargo spaces" means those spaces in which the Charterers have in fact carried cargo since April 1973
3. Repair of stevedores' damages which have occurred during the currency of the Charter shall be carried out and paid for as follows :-
 - (a) A joint off-hire survey shall take place as soon as practicable after the vessel's arrival at the drydocking port for the determination of such stevedore damage as is in existence at the date of the survey. The time and expenses of such joint survey shall be shared equally. The surveyors shall certify whether any stevedores' damage in the cargo spaces has been the subject of a notice under Clause 30 of the Charterparty
 - (b) The repair of such stevedores damage as class require to be made good and is certified to be covered by a notice under Clause 30 shall commence immediately on the vessel's arrival in drydock and shall be carried out with the maximum possible

despatch as far as possible seven days a week, twenty four hours a day (unless the Charterers instruct otherwise) provided always that if the Charterers undertake to order and supervise the work for their own account they may programme the work as they wish. If Owners make good the stevedores' damage to class requirements they shall ensure that in all cases of conflict between labour and/or equipment and/or material requirements for work under this clause and Clause 2, an equitable division of such resources shall be made between these conflicting requirements as agreed between Owners' and Charterers' superintendents during the repair period

- (c)(i) If the time required for the repair of stevedores' damage as aforesaid extends beyond the time of the completion of the work specified in Clause 2 above and any work other than routine maintenance in addition thereto carried out for owners' account, then the vessel shall be considered as on-hire as from that moment until such time as the repairs of the stevedores' damage are completed provided that owners shall have the right to carry out routine maintenance for their account during such time
- (ii) "Routine maintenance" for purposes of this paragraph means such work as could be done by the crew in port during cargo operations without putting the vessel off-hire.
- (d) The cargo spaces shall be rendered free of rust and scale and painted forthwith after the completion of the repair of stevedores' damage in any particular cargo space
- (e) The Charterers will pay to Owners' bank the whole of the direct cost attributable to repairs of the stevedores' damage under Clause 1(b) and hire for any time chargeable to Charterers under Paragraph (c) of this Clause within a

maximum of seven working days from the time that the Owners shall have paid the accounts of the shipyard in respect of such stevedores damage. The provisions of Clause 5 of the Charterparty shall apply to the payments required under this clause.

- (f) The payment by Charterers under Paragraph (c) shall be expressly without prejudice to the Charterers' rights to dispute (either under Charterparty Clause 30 or otherwise howsoever) such account or any on-hire period and their liability to pay for any item shown therein and to claim reimbursements from the Owners of all or any part of the sum so paid and without prejudice to the Owners' right to claim from the Charterers the cost of repairing the balance of the stevedores damage incurred by the vessel during the currency of the Charterparty and the cost of the work carried out under Paragraph (d) hereof.

4. Owners and Charterers agree hereby to settle all Baltimore off-hire disputes in a sum of U.S.\$ 10,000 which Charterers shall be at liberty to deduct from hire due on 8th July.
5. Subject to the provisions of Clause 3(c) the vessel shall be off-hire from the time when she deviates to the drydocking port until she regains the direct course at the same point from the port of discharge on the voyage referred to in Clause 1 to the next port ordered by the Charterers after completion of drydocking.
6. It is the stated and irrevocable intention of both parties hereto to proceed with all arbitrations required hereunder as a matter of urgent priority and the parties agree to co-operate



in seeking directions from their arbitrators and/or by
appointing separate tribunals for isolated matters capable
of speedy determination with a view to resolving any outstanding
disputes well within the validity of this Charterparty.

The terms of this Agreement shall for purposes of the Arbitration
Clause in the Charterparty be deemed to be a part of the Charter.

As witness the hands of the parties this 2nd day of July 1976

for Owners

(signed)

.....
J. Pipilis

(signed)

.....
Sinclair, Roche & Temperley
By telephonic authority this day

TO SINCLAIRE ROCHE LONDON
FOR MR WILLIAMS

CC EFPLOIA PIRAEUS
FOR MR PIPILIS
RICHARDS BUTLER (FOR MR WILSON /REID)

..DRYS ..

THANKS YR TLX

WE NOTE YOUR FORMAL PROTEST. AS YOU ARE AWARE CLAUSE 18 C/P SPECIFICALLY GRANTS OWNERS A LIEN UPON ALL CARGOES AND ALL SUB-FREIGHTS FOR ANY AMOUNTS DUE UNDER THE CHARTER. THE AMOUNTS LISTED BELOW ARE ALL OWING UNDER THE CHARTER AND FOR THE REASONS SET OUT BELOW WE REJECT THE ALLEGATION THAT OWNERS HAVE ACTED IN ANY WAY IMPROPERLY.

THE FOLLOWING AMOUNTS ARE AT PRESENT OWING UNDER THE CHARTER
USD LRS 400,186.75 DUE FOR HIRE BUNKERS ETC AS PER OWNERS INVOICE
DATED 23 DEC. 1976 AND SUMMARISING DEBIT NOTES DATING FROM
BETWEEN 10.7.75 TO 4.12.76

USD LRS 373,500.00 DUE FOR COST OF REPAIR OF STEVEDORE DAMAGE
USD LRS 25,000.00 DUE FOR SOME INDIRECT EXPENSES SUCH AS BERTHING
DUES, ATTENDANCE EXPENSES, LLOYDS FEES ETC THIS FIGURE IS NOT YET
FINALISED .

OWNERS HAVE NEVER RECEIVED REPLIES TO OR ACKNOWLEDGEMENT OF THEIR
LETTERS AND DEBIT NOTES OF 11.7.76, 4.10.76, 27.11.76, 4.12.76
OR 23.12.76. IN VIEW OF THE CONSIDERABLE EXPENSE INCURRED BY
OWNERS WHICH CHARTERERS DECLINE TO ACKNOWLEDGE OR CONTRIBUTE
TO OWNERS WOULD NOT HAVE BEEN SAFEGUARDING THEIR OWN PROPER
INTERESTS IF THEY HAD NOT OBTAINED SECURITY FOR THE LARGE SUMS WHICH
WILL IN DUE COURSE BE AWARDED TO THEM IN ARBITRATION .

WE ARE PLEASED TO NOTE YOUR COMMENTS ON THE TERMS OF AN ORDER
FOR DIRECTIONS. THOSE COMMENTS AND THE DESIRE OF BOTH PARTIES TO
PROCEED TO ARBITRATION AS SPEEDILY AS POSSIBLE DO NOT EFFECT THE
VALIDITY OF THE ABOVE PARAGRAPH.

WE DO DISPUTE THAT YOUR PROPOSED APPLICATION TO THE ARBITRATORS
IS FULLY SANCTIONED BY PARA 6 OF THE AGREEMENT OF 2.2.76. THE
NEED FOR OWNERS TO OBTAIN SECURITY IS QUITE DISTINCT TO THEIR
AGREEMENT AND THEIR CONTINUING WILLINGNESS TO PROCEED TO
ARBITRATION AS A MATTER OF URGENT PRIORITY. IF CHARTERERS CONTINUE
TO WISH TO MAKE AN APPLIC

ION TO THE ARBITRATORS WOULD YOU PLEASE
DISCUSS THE MATTER WITH MR WILSON WHO IS AT PRESENT HALF WAY ACROSS
THE ATLANTIC) ON THE MORNING OF 10 JANUARY

UNQUOTE

QUOTE

DRYS

WE HAVE BEEN INFORMED BY OUR CLIENTS THAT YOUR MEMBERS HAVE ATTEMPTED TO LIEN THE HIRE DUE UNDER THE SUBCHARTER.

IN OUR VIEW YOUR MEMBERS HAVE NO GROUNDS WHATSOEVER FOR THIS ACTION AND WE NOW FORMALLY PROTEST AND HEREBY RESERVE ALL OUR CLIENTS RIGHTS TO CLAIM DAMAGES FOR THIS IMPROPER INTERFERENCE WITH THE SUBCHARTER.

WE WOULD BE GRATEFUL FOR A CLEAR INDICATION FROM YOU IF POSSIBLE BEFORE NEW YORK OPENS TODAY AS TO WHAT AMOUNTS YOUR MEMBERS ASSERT TO BE DUE TO THEM UNDER THE CHARTER JUSTIFYING THE EXERCISE OF A LIEN.

WE ARE NOW IN A POSITION TO DISCUSS WITH YOUR SOLICITORS THE TERMS OF AN ORDER FOR DIRECTIONS FOR PROGRESSING THE ARBITRATION. OUR PROPOSALS WILL BE LARGELY IN LINE WITH OWNERS PROPOSALS AS SET OUT IN MR WILSONS LETTER OF 12 NOVEMBER.

WE MUST ALSO GIVE YOU NOTICE THAT UNLESS YOUR CLIENTS CAN JUSTIFY THEIR ATTEMPTED LIEN TO US OR DROP IT WE SHALL APPLY FORMALLY ON 18TH JANUARY TO THE TRIBUNAL FOR AN IMMEDIATE DATE FOR A SHORT HEARING AT WHICH WE SHALL SEEK AN INTERIM AWARD DECLARING YOUR MEMBERS LIEN IMPROPER. THIS PROCEDURE IS FULLY SANCTIONED BY PARA 6 OF 2-T-76 AGREEMENT, AS WE IMAGINE YOU WILL NOT DISPUTE.

THIS ACTION IN LONDON WILL BE TAKEN IN CONJUNCTION WITH ANY NECESSARY ACTION IN NEW YORK OR ELSEWHERE IF THE LIEN IS NOT RELEASED.

REGARDS

HGM / SINCLAIRS

CORRECTION PSE READ... AS WE IMAGINE YOU WILL NOT DISPUTE

SIRS

Please take notice that a
 _____ of which the within is a
 copy, was filed and entered in the office of
 the clerk of the above named Court, on

_____, 19

Yours, &c.,

KIRLIN, CAMPBELL & KEATING

To

SIRS

Please take notice that we will submit the
 annexed order for settlement and signature
 at the clerk's office of the above named
 Court on the _____ day of _____, 19____
 at 11 o'clock in the forenoon.

Yours, &c.,

KIRLIN, CAMPBELL & KEATING

To

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

DRYS SHIPPING CORPORATION,
 Plaintiff,
 against
 Freights, Sub-Freights,
 Charter Hire and/or Sub-
 Charter Hire of the M.S.DRYS,
 and
 A/S FALKEFJELL and A/S
 DOVREFJELL,
 Defendants.

AFFIDAVIT IN OPPOSITION TO
 DEFENDANTS' MOTION TO VACATE
 ARREST AND ATTACHMENT.

KIRLIN, CAMPBELL & KEATING
 Attorneys for Plaintiff
 ONE TWENTY BROADWAY,
 NEW YORK, N. Y. 10005
 (212) 732-5520

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....x
DRYS SHIPPING CORPORATION,
Plaintiff,

-against-

Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of the
M.S. DRYs,

and

A/S FALKEFJELL and A/S DOVREFJELL,
Defendants.

1-11-77
: 6 MP
: SUPPLEMENTAL
AFFIDAVIT

: 77 Civ. 73 (GLG)

.....x
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Harvey G. Williams, being duly sworn, deposes

and says:

1. I am a solicitor of the Supreme Court of Judicature of England and a partner in the firm of Sinclair, Roche & Temperley of London, attorneys for A/S Falkefjell and A/S Dovrefjell, defendants in this action, and I submit this supplemental affidavit in support of their motion to vacate the attachment, to set aside an alleged maritime lien and to dismiss the Complaint in the captioned action. I have personal conduct of the proceedings on foot before a London arbitration tribunal between the Plaintiff and the Defendants in respect of the matters herein deposed to.

2. At oral argument on Charterers' motion on January 10, 1977, a number of arguments were advanced by the attorneys for Owners which should be clarified.

3. It is the Charterers' case that the lien granted by Clause 18 of the Charter is governed entirely by its own terms and does not cover claims for unliquidated sums by way of damages. All the Owners' claims in this action are clearly of this nature.

See fm
1-11-77
M.P.
2.11.25
1-12-77
gtr

4. I was personally involved on behalf of the Charterers in the negotiation, drafting and signature of the repair and accounting memorandum of agreement of July 2, 1976. (Exhibit 1 to my affidavit of January 10, 1977 and Exhibit D to the affidavit of David A. Nourse dated January 10, 1977) The primary purpose of this agreement is defined in Clause 1. The need for an agreement and the purpose of the discussion which led to its being made was to provide how and when the vessel should be restored to a condition wherein she could satisfactorily perform under the Charter. The Charterers did not require the repair of any stevedores' damage. Such damage in no way affected their operations, nor in the Charterers' view, did any such damage affect seaworthiness or the vessel's classification status. Naturally, the Charterers did not object, however, when the Owner suggested that he would accelerate the special survey to class requirements in the cargo spaces.

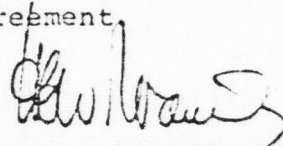
5. It is my primary submission that no sums now fall to be paid by the Charterers under this July 2nd agreement. It is common ground between the parties that the surveyors did not in fact agree that any of the damage found was covered by notices delivered by the Owners under Clause 30 of the Charter. The parties had and still have different views on why this agreement was not reached and it is, of course, the duty of the London arbitrators to sort out the true position on this question. The Charterers do not have an obligation to pay anything under the

agreement (except in terms of Clause 3(a) thereof) until the arbitrators have decided this. This is because by Clause 3(c)(1) stevedores' damage repair time only counts against the Charterers to the extent both that it exceeds time for Owners' repairs under Clause 2 of the agreement and to the extent that it is time "for the repair of stevedores' damage as aforesaid" (underscoring added). The expression, "as aforesaid", refers and can only refer to the preceding paragraph B in the same clause. This conclusion is reinforced by the terms of Clause 3(e).

6. I do not consider that any blame can possibly be attributed to the Charterers for any delay in the arbitration proceedings. Mr. Cedric Barclay is not the third arbitrator, but was the choice of the Owners as their arbitrator. Further, the Charterers have offered to change the Arbitration Tribunal, but this offer was declined by the Owners.

7. It remains the Charterers' case that an attempt to obtain security is a misuse of the lien provisions contained in Clause 18 of the Charter. However, in English law, which in my submission is the proper law both of the charter party and of the July 2nd agreement, has satisfactorily established court procedures which permit a party to an arbitration who feels he is entitled to security for these claims to seek injunctive remedy which in appropriate cases is granted in a manner closely analogous to the process of maritime attachment and garnishment attempted by the Owners in this action. If the Owner was able to establish the facts and matters

relied upon by it in its affidavits and memoranda in this action, I believe such relief could well be open to the Owners in London without any infringement of the choice of forum provided by Clause 17 of the charter and Clause 6 of the July 2nd agreement.



Harvey G. Williams

Sworn to before me this
11th day of January, 1977.



Notary Public

MARIE A. CRONELL
Notary Public, State of New York
Exp. 12/31/1980
County of New York
City of New York
Commission Expires 12/31/1980

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DRYS SHIPPING CORPORATION,

Plaintiff,

against

Freights, Sub-Freights,
Charter Hire and/or Sub-Charter
Hire of the M.S. DRYs,

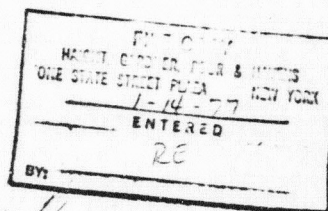
and

A/S FALKEFJELL and A/S
DOVREFJELL,

Defendants.
-----X

77 Civil 73 (GLG)

SUPPLEMENTAL AFFIDAVIT IN
OPPOSITION TO DEFENDANTS'
MOTION TO VACATE ARREST
AND ATTACHMENT



STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID A. NOURSE, being duly sworn, deposes and says:

1. I make this affidavit in response to a question by the Court in the course of argument on January 10, 1977 as to the specific periods of time for which plaintiff claims hire is due from defendants pursuant to the charter party dated August 22, 1972 and the Memorandum of Agreement dated July 2, 1976 and for which plaintiff has exercised its charter party lien on sub-freights of M.S. DRYs.

2. Following the argument on January 10, 1977 I sought further information from plaintiff concerning the Court's question and on January 12, 1977 received, via telex from London, a detailed statement by plaintiff, a copy of which is annexed hereto as Exhibit A.

3. Plaintiff has set out in paragraphs 1 through 22 and paragraph 24 of its statement, (Exhibit A, pages 1-5, 10) various details concerning the actions of both parties which undoubtedly will be the subject of testimony before the London arbitrators

when hearings are held concerning the disputes between the parties. The details concerning the time periods for which hire is claimed are contained in paragraph 23 of the statement (Exhibit A, pages 6 to 9).

4. The periods of time for which hire is claimed by plaintiff from defendants are as follows:

"A-Hire (While vessel was operating under charterers' instructions)

AA-From 16.30 hrs 8th July 76 to 16.10 hrs 28th July 76

AB-From 18.00 hrs 29th Nov. 76 to 16.30 hrs 8th Jan. 77

Total Days:

59.924 x Doll 3,145 Daily - Doll 188,459.18

Less Charterers Payments:

On 8.7.76 Doll 85,921.65

On 8.12.76 " 49,772.88

- Doll 135,694.53

Balance due to Owners

Doll 52,764.65

B-Hire (While vessel was undergoing joint inspections, in Piraeus, as per para 3A/3B of Agreement 2nd July)

BA-From 0800 hrs 9th August 76 to 1500 hrs 14th Sept. 76

Total Days:

36.292 x Doll 3,111.09 daily - Doll 112,907.77

Less 50 = Owners share as per
para 3A of Agreement
2nd July

- Doll 56,453.88

Balance due to Owners

Doll 56,453.89

C-Hire (While vessel was undergoing stevedore damage repairs, after owners repairs were completed, as per para 3C (I) of Agreement 2nd July)

CA-From 21.30 hrs 17th Sept 76 to 1800 hrs 29th Nov. 76

Total Days:

72.854 x Doll 3,153.48 daily - Doll 229,743.91

Balance due to Owners

Doll 229,743.91

(Variation on daily hire calculation
due to the number of days falling
in months having 30 or 31 days)

Less Owners Credit Note to Charterers
 F138/23.12.76 covering off hire for
 deviation to repair port, adjustment
 of bunkers consumed etc, as per para
 4/5 of 2nd July Agreement Doll 43,859.39
 out of which amount of Doll 31,962.55
 must be deducted, as same has already
 been taken into account in calculating
 the actual hire due to Owners in para
 23A above.

Therefore difference to Charterers

Credit	Doll	11,896.84"
--------	------	------------

TOTAL HIRE CLAIMED	\$327,065.61

5. In addition, plaintiff claims against defendants
 for the repair costs directly attributable to the repair of
 stevedore damage in the total amount of \$471,621.14. (Exhibit A,
 pages 8-9)

David A. House

Sworn to before me this

13th day of January, 1977.

George E. Dalton
 Notary Public

GEORGE E. DALTON
 Notary Public, State of New York
 No. 450702 Qualified in N. Y. County
 - Term Expires March 30, 1977

422219 KCK UI

BB5272 MUTHAL G

ATTN NURSE

Dec 12 Sun

GIVEN TO DAD

'•DRYS'•'

FOLLOWING TLX RECEIVED FROM OWNERS

QUOTE

M V DRYS T C 22.8.72 / AGREEMENT 2.7.76

- 1 VESSEL WAS DELIVERED TO THIS CHARTER ON 8TH APR. 1973
- 2 VESSEL WAS PASSED FOR SPECIAL SURVEY SIX MONTHS LATER
(OCT. 1973 FALMOUTH)
- 3 IN JULY 1976 CHARTERERS AND OWNERS WITH THEIR LAWYERS AND
CLUB REPRESENTATIVES MET IN LONDON TO DISCUSS CERTAIN
DISPUTES AND THE AGREEMENT DATED 2ND JULY 1976 WAS CONCLUDED
- 4 THE PARTIES WERE AWARE AT THE TIME THAT THE CARGO
COMPARTMENTS OF THE VESSEL WERE HEAVILY DAMAGED BY
CHARTERERS STEVEDORES AND THAT CONSIDERABLE AMOUNTS/ TIME
WOULD HAVE BEEN REQUIRED TO RESTORE THEM TO CLASS
REQUIREMENTS IN ORDER TO PASS FOR SPECIAL SURVEY
5. THEREFORE THEY STIPULATED IN THE AGREEMENT IN DETAIL THE
PROCEDURE TO BE FOLLOWED AND WHO IS LIABLE TO PAY FOR WHAT,
RESERVING THE RIGHT (PARA 3F) OF RECLAIMING IN ARBITRATION
OF ANY AMOUNTS PAID IN EXCESS OF THEIR LIABILITY

Chrysomelidae

•

10-20-20

1900

133

11

Journal of Interpersonal Violence

03-04-98

- 6 THE VESSEL ARRIVED IN PIRAEUS ON 9TH AUG. 1976 AND IMMEDIATELY A JOINT CONDITION SURVEY COMMENCED FOR THE DETERMINATION OF STEVEDORE DAMAGES (PARA 3 A)
- 7 AS FROM THE SAME DATE OWNERS COMMENCED THE CARRYING OUT OF MAINTENANCE WORK WHICH WAS AGREED TO BE DONE AT THEIR TIME/ EXPENSES
- 8 JOINT SURVEYORS CONTINUED THEIR EXAMINATION ON BOARD UNTIL THE 14TH (SATURDAY)
- 9 ON 17TH (FIRST WORKING DAY AFTER THE 14TH) CLASS SURVEYOR WAS CALLED ON BOARD AND IN THE PRESENCE OF THE JOINT SURVEYORS EXAMINED THE HOLDS OF THE SHIP AND MADE HIS RECOMMENDATIONS AS PER PARA 3B
- 10 ON 18TH A DRAFT OF THE JOINT SURVEY AND LLOYDS RECOMMENDATIONS WERE MADE AVAILABLE TO THE PARTIES AND OWNERS TELEXED CHARTERERS REPR. (ON THE SPOT) INVITING THEM TO EXERCISE THEIR OPTION OF PARA 3 B AND CARRY OUT THE REPAIRS THEMSELVES
- 11 ON 19TH CHARTERERS REPR. REPLIED THAT OWNERS FAILED TO CONVINCE CHARTERERS THAT DAMAGES IN HOLDS WERE ATTRIBUTABLE TO STEVEDORE DAMAGES AND LEFT PIRAEUS
- 12 THE SAME DAY OWNERS ACTING ON ADVISE FROM THEIR LONDON LAWYERS SUMMONED THE JOINT SURVEYORS TO ACT AS PER PARA 3 A OF THE AGREEMENT
- 13 ON 20TH CHARTERERS SURVEYOR TELEXED "REGRET CAN NOT ANSWER UNLESS WE ARE INSTRUCTED TO DO SO BY OSLO" OWNERS SURVEYOR REPLIED THAT HE WAS READY TO CONTINUE BUT CHARTERERS SURVEYOR REFUSED TO ATTEND

111 6600th Communications

NY Phone: 212-696-7072 / 212-696-7072 / 212-696-7072

111 6600th Communications Inc.

111 6600th Communications

111 6600th Communications

111 6600th Communications

THIS IS CONFIRMED BY LLOYDS LETTER DATED 11TH OCTOBER
1976 AND ALSO BY ALL SURVEYORS ATTENDED THE SPECIAL SURVEY
CARRIED IN OCT.73 AND THE SPECIAL SURVEY CARRIED IN
NOV.76

BD THE THICKNESS DETERMINATION ORDERED BY THE CLASS SURVEYOR PROVED THAT THERE WAS NO QUESTION OF WASTAGE AND ONLY THE IMPROPER USE OF LOADING/DISCHARGING EQUIPMENT BY THE CHARTERERS STEVEDORES COULD HAVE CAUSED THE DAMAGES FOUND

BC THEY WERE PROPERLY NOTIFIED AS PER CHARTER PARTY BY THE MASTER AT THE TIME OF OCCURANCE OF THESE DAMAGES AND ALSO BY THE OWNERS ON NOUMEROUS OCCASIONS

BD THEY ALWAYS HAD A SUPERCARGO ON BOARD THE SHIP WHO WAS SUPERVISING THE MASTER AT ALL TIMES

BE THEY HAD A PERMANENT REPRESENTATIVE DURING THE CURRENCY OF PRESENT REPAIRS

BF THEY INSTRUCTED (AND THIS IS OFFICIALY CONFIRMED IN WRITING) THEIR SURVEYORS USED ON THE JOINT SURVEYS HELD IN PIRAEUS NOT TO FULFIL THE PARA 3A OF THE AGREEMENT

BG THE STEVEDORE DAMAGE NOTIFICATIONS ARE LISTED IN THE JOINT CONDITION SURVEY REPORT HELD IN PIRAEUS IN AUGUST 1976

C- CHARTERERS OBVIOUS INTENTION IS TO AVOID PAYMENT OF THE AMOUNTS DUE NOW AND BY DELAYING THE ARBITRATION PROCEEDINGS FOR AS LONG AS THEY CAN (THEIR UNWILLINGNESS TO PROCEED WITH ANY SUGGESTION MADE BY OWNERS LAWYER IS CLEARLYS EVIDENCED BY THE LACK OF ANY REPLY TO HIS PROPOSALS) TO POSTPONE PAYMENT FOR ONE OR TWO YEARS TIME

BY Phone 3.10.18.197 3311/may/73/22/1006.75

111 WORLD COMMERCE INC.

UNIONERS INC.

BY Phone 3.10.18.197 3311/may/73/22/1006.75

111 WORLD COMMERCE INC.

UNIONERS INC.

DE MEANTIME OWNERS FOLLOWING CHARTERERS REFUSAL TO DO THE REPAIRS THEMSELVES AS PER PARA 33 HAD NO OPTION BUT TO CARRY OUT AND PAY FOR THE REPAIRS OF STEVEDORE DAMAGES IN ORDER TO KEEP THE VESSEL CLASSED AS PER CHARTER PARTY AND DELIVERED BACK TO CHARTERERS SERVICE TO PERFORM THE BALANCE PERIOD OF THE CHARTER EXPIRING ON APRIL 1978 ALL AMOUNTS DISBURSED BY THE OWNERS FOR THIS PURPOSE PLUS THE HIRE CORRESPONDING TO TIME USED FOR SUCH REPAIRS ARE PAYABLE TO OWNERS IMMEDIATELY IN ACCORDANCE WITH THE CHARTER PARTY AND WITHIN MAXIMUM SEVEN WORKING DAYS IN ACCORDANCE WITH THE AGREEMENT DATED 2ND JULY 1976
(PARA 3 E)

23 THE AMOUNT DUE TO OWNERS BY CHARTERERS FOR THE PERIOD 8TH JULY 76 TO 8TH JAN. 77 ARE AS FOLLOWS

A-HIRE (WHILE VESSEL WAS OPERATING UNDER CHARTERERS
INSTRUCTIONS)

AA- FROM 16.30 HRS 8TH JULY 76 TO 16.10 HRS 29TH JULY 76

AB- FROM 18.00 HRS 29TH NOV. 76 TO 16.30 HRS 8TH JAN. 77

TOTAL DAYS:

59.924 X DOLL 3,145 DAILY = DOLL 188,459.18

LESS CHARTERERS PAYMENTS:

ON 8.7.76 DOLL 85,921.65

ON 8.12.76 " 49,772.88 DOLL 135,694.53

BALANCE DUE TO OWNERS DOLL 52,764.65

BEST COPY AVAILABLE

B-HIRE (WHILE VESSEL WAS UNDERGOING
JOINT INSPECTIONS, IN PIRAEUS,
AS PER PARA 3A/3B OF AGREEMENT
(2ND JULY))

BA- FROM 0800 HRS 9TH AUGUST 76 TO 1500 HRS 14TH SEPT. 76

TOTAL DAYS:

36.295 X DOLL 3,111.69 DAILY = DOLL 112,987.77

LESS 5% OWNERS SHARE AS PER

PARA 3 A OF AGREEMENT 2ND

JULY

DOLL 56,493.88

BALANCE DUE TO OWNERS

DOLL 56,493.89

C-HIRE (WHILE VESSEL WAS UNDERGOING
STEVEDORE DAMAGE REPAIRS,
AFTER OWNERS REPAIRS WERE
COMPLETED, AS PER PARA 3 C
(1) OF AGREEMENT 2ND JULY)

CA- FROM 21.30 HRS 17TH SEPT 76 TO 1800 HRS 29TH NOV. 76

TOTAL DAYS:

72.854 X DOLL 3,153.48 DAILY = DOLL 229,743.91

BALANCE DUE TO OWNERS

DOLL 229,743.91

(VARIATION ON DAILY HIRE CALCULATION

DUE TO THE NUMBER OF DAYS FALLING

IN MONTHS HAVING 30 OR 31 DAYS)

E- REPAIR COSTS (DIRECTLY ATTRIBUTABLE TO THE
REPAIRING OF STEVEDORE DAMEGES
AS PER PARA 3 E OF 2ND JULY
AGREEMENT FOR WHICH INVOICES
HAVE NOT YET BEEN FINALISED)

EA- LIODIS (STEEL WORK)	ABT DOLL	116,000 +
EB- NENTECHICAL	DOLL	100,000 +
EC- E.M.S.P.	DOLL	135,000 +
ED- NEORION SYROS TESTS		
ETC)	DOLL	24,000 +
EE- GENERAL SHIPPING		
(CLEANING TANKS)	DOLL	8,500 +
EG- BERTHING DUES, ATTEN-		
DANCE EXPENSES, LLOYDS		
FEEES ETC	DOLL	25,000 +

NET AMOUNT DUE TO OWNERS

BASED ON INVOICES NOT

YET FINALISED

DOLL 398,500 +

TOTAL AMOUNT DUE TO OWNERS DOLL 798,636.75

24 CHARTERERS FINANCIAL STATUS

IN ACCORDANCE WITH INVESTIGATION MADE BY OWNERS CLUB CHARTERERS OWN THE FOLLOWING SHIPS:

A- M V NOREFJELL EST. VALUE DOLL 5 MIL. MORTGAGED FOR DOL. 9.5 MIL
 B- M V DOVREFJELL EST. VALUE DOLL 5 MIL. MORTGAGED FOR DOL. 11.9 MIL
 C- M V JOTUNFJELL EST. VALUE DOLL 13 MIL. MORTGAGED FOR DOL. 19.5 MIL

TALL TOGETHER 14 MORTGAGES TO VARIOUS BANKS AND COMPANIES
 OF WHICH MORTGAGES HAVE BEEN CHARGED ON THE VESSEL AS
 FROM MID 75 ONWARDS IN FACT 4 IN 75 AND 7 1976)

ALSO IN ACCORDANCE WITH SAME INFO THE CHARTERERS HAVE UNDER
 CONSTRUCTION A BIG TANKER IN SWEDEN WHICH CAN BE CONSIDERED
 THE BIGGEST LIABILITY FOR THEM

THANKS AND BEST REGARDS

UNQUOTE

SHALL PHONE A TO ADDITIONAL INFORMATION REQUIRED

REGARDS HAMSHER

MUTUALITY LDN

SENT 12/1/77 BCP

1628+

422219 KCR UI

855272 MUTUAL G

NY Phone Serv: Teleg. 737-3311 / Mgr. 7522 / Int. 7550 / Telex 7590

COMMUNICATIONS INC.

pr. 252/telex: 7150/7522-7590

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X
:
DRYS SHIPPING CORPORATION,
:
Plaintiff,
:
-against-
:
Freights, Sub-Freights, Charter
Hire and/or Sub-Charter Hire of
the M.S. DRYs,
:
and
:
A/S FALKEFJELL and A/S DOVREFJELL,
:
Defendants,
:
and
:
ATLANTIC AND GREAT LAKES STEAMSHIP
CORPORATION,
:
Garnishee.
:
.....X

77 Civ. 0073 (GLG)

Letter dated February 2, 1977
and letter dated February 4, 1977

DONALD J. KENNEDY
Of Counsel.

Attorneys for Defendants
HAIGHT, GARDNER, POOR & HAVENS
ONE STATE STREET PLAZA
NEW YORK, N.Y. 10004
(212) 344-6800

COPY

149a

KIRLIN, CAMPBELL & KEATING

ONE TWENTY BROADWAY

NEW YORK, N.Y. 10003

February 2, 1977

BY HAND

83868

Honorable Judge Gerard L. Goettel
United States District Court
Southern District of New York
United States Courthouse
Foley Square, New York 10007

Re: Drys Shipping Corporation v. Freights,
Sub-Freights, Charter Hire and/or Sub-
Charter Hire of M.S. DRYs and A/S
Falkefjell and A/S Dovrefjell
77 Civil 73 (GLG)

Dear Judge Goettel:

In the course of argument before you on Monday, January 31, 1977, you asked concerning the status of the London arbitration between plaintiff and defendants. We inquired of owners' representatives in London concerning this matter and today have been advised that no further progress has been made in the arbitration and not even a time table for the proceedings has been set.

You also inquired as to the amounts which have been arrested or attached as a result of the maritime process issued by this Court on January 7, 1977. We have been advised by the attorneys for garnishee Atlantic & Great Lakes Steamship Corporation that they hold the total amount of \$98,472.60 subject to order of the Court, consisting of

the amount of \$58,500 of sub-time charter hire for which the garnishee filed an answer on January 7, 1977 and the additional amount of \$39,972.60 of sub-time charter hire which we understand is the final amount due under the time charter party of the DRYs between defendants' managing agents and the garnishee.

We can also confirm that all three New York banks on which process of maritime attachment was served have reported that they hold no funds belonging to the defendants. Thus, the total amount involved in defendants' motion to vacate plaintiff's arrest and maritime attachment is \$98,472.60, whereas plaintiff's claim is for hire in the amount of \$327,065.61 and repair costs in the amount of \$471,621.14 or a total of \$798,686.75.

In the course of the argument you also raised several questions concerning Section 8 of the U.S. Arbitration Act, indicating that plaintiff might not have been able to commence a proceeding under Section 8 because arbitration in London had already been commenced. We submit that the "proceeding" referred to in Section 8 is not the arbitration itself but the application for relief under the Act. See Sections 3, 4 and 9 of the Act in this connection.

Further, as additional support for our submission that nothing in the United States Arbitration Act limits plaintiff from

obtaining any provisional remedies otherwise available by contract or maritime law, we respectfully call your attention to Judge Metzner's analysis in Texas San Juan Oil Corp. v. An-Son Offshore Drilling Co., 194 F.Supp. 396, 1961 AMC 1614 (SDNY 1961), a case not previously cited to you:

Respondent contends that "aggrieved" as used in this section of the Act must be defined in the same way as "aggrieved" is expressly defined in Section 4 of the Act (i. e., aggrieved by the failure, neglect, or refusal of another to arbitrate). Since the libel contains no allegation that libellant has demanded arbitration or that respondent has failed or refused to arbitrate, respondent questions its right to qualify under this section.

The purpose of Section 8 is to make available to a party, who had agreed to arbitrate in a maritime controversy, "the traditional admiralty procedure with its concomitant security" and at the same time to save his right to arbitration. Anaconda vs. Amer. Sugar Co., 322 U. S. 42, 46, 1944 A. M. C. 590 (1944). See also Belize, 1938 A. M. C. 1342, 25 F. Supp. 663, 665 (S.D.N.Y., 1938); Murray Oil Products Co. vs. Mitsui & Co., 146 F.(2d) 381, 384 (2 Cir., 1944).

In essence, "to achieve this end the arbitration is made a phase of the suit in admiralty." Sydfold, 1938 A. M. C. 611, 25 F. Supp. 662, 663 (S.D.N.Y., 1938). In light of this purpose the construction argued by the respondent would seem erroneous. It would force a party to choose between arbitration, on the one hand, and his ancient admiralty right of jurisdiction in rem or by foreign attachment, on the other (except for the singular instance where the opposing party failed, neglected

or refused to go to arbitration). The courts have rejected this conclusion. The Bolins, supra; Instituto Cubano De Estabilizacion vs. T/T Firbranch, 1955 A.M.C. 459, 130 F. Supp. 170, 172 (S.D.N.Y., 1954). In Instituto Cubano De Estabilizacion, supra, the court allowed libellant to qualify under Section 8 of the Arbitration Act even though it was clear that there had been no default or refusal to arbitrate and the arbitration was proceeding.

Very truly yours,

KIRLIN, CAMPBELL & KEATING

BY: /s/

David A. Nourse

cc: Donnell Kennedy, Esq.
Bright, Gardner, Poor & Havens

Richard L. Berardo, Esq.
Conover, Harboe, Walsh & Kennedy

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DELIVER

Rec'd by Mail from Date 2/4 Time _____
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Signature to

BY HAND

Honorable Gerard L. Goettel
United States District Court
Southern District of New York
United States Courthouse, Room 409
Foley Square, New York 10007

Drys Shipping Corporation v. Freights,
Sub-Freights, Charter Hire and/or
Sub-Charter Hire of M.S. DRYs and A/S
Falkefjell and A/S Dovrefjell
77 Civ. 73 (GLG)

Our file 177-2105

Dear Judge Goettel:

We refer to Kirlin, Campbell & Keating's
By Hand letter addressed to Your Honor and dated February
2, 1977. For the record, we note that we received our
copy of this letter by messenger at approximately 11:30 A.M.
on February 3rd. Although we do not wish to burden the
court with a lengthy response, we do feel that two points
should be clarified.

First, the attorneys for Owners contend that the total amount involved in defendant's motion to vacate the arrest and attachment is \$98,472.60. That figure is somewhat misleading. Defendant-Charterer will still be subject to further attachments of sub-charter hire or freight on subsequent voyages that the vessel performs. Therefore, the amounts involved are \$98,472.60, plus whatever additional sub-charter hire or freight will be payable to the Charterers under whatever contracts they may enter.

2- Honorable Gerard L. Goettel

Second, we note that plaintiff has cited still another authority in its belated attempt to come within the purview of 9 U.S.C. §8 by altering the plain meaning of the language of that section. Once again, we are struck by the fact that plaintiff has failed to cite one case in the thirty year history of that section where the arbitration preceded the filing of the libel in rem. Perhaps more important, however, is the plaintiff's failure to address the issue of the effect of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards on the pre-Convention precedents which it cites. As Your Honor noted at the hearing on Monday, January 31, 1977, the ratification of the Convention by the United States ushered in a new era with respect to international arbitration agreements.

In this regard, it is important to note that the draftsmen of the Convention did not overlook the issue of security in arbitration. Article III provides for enforcement of awards "in accordance with the rules of procedure of the territory where the award is relied upon...". Article VI, significantly, provides that a party who seeks to have an arbitration award set aside may be required to provide security. Yet, as the Third Circuit noted in the McCreary case and Judge Motley noted in Metropolitan World Tanker Corp., there is no indication that attachment is warranted under the Convention prior to the award. (See Article II, Section 3).

Very truly yours,

HAIGHT, GARDNER, POOR & HAVENS

By


Donald J. Kennedy

DJK/atk

cc: Kirlin, Campbell & Keating
Donovan, Maloof, Walsh & Kennedy

RECEIVED
MAR 1 1977
DOUGLAS WALSH OF
WALSH & KENNEDY